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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSÉ SORIANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The order of the Court of Claims (R. 15–16) dismissing the petition below is not reported. The opinion in *Logronio* v. *United States*, on which the order of dismissal is based, is reported at 132 C. Cls. 596.

JURISDICTION

The judgment of the Court of Claims was entered on December 16, 1955 (R. 15). The petition for a writ of certiorari was filed on March 13, 1956, and was granted on April 30, 1956 (R. 16). 351 U. S. 917. The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the United States is directly liable to Filipino civilians for supplies and equipment furnished by them during the Japanese occupation of the Philippine Islands to Filipino guerrillas who were subsequently recognized by the Philippine Government as members of irregular units of the Philippine Commonwealth Army, which Army had been called into the service of United States military forces in the Philippines and had served with those forces in resisting the Japanese invasion.

STATUTES AND ORDERS INVOLVED

The statutes and orders here involved are set forth at Appendices A through E of the petition for writ of certiorari (Pet. 1a–25a), Appendices F through CC of petitioner's brief (1b–83b), and Appendices A through C, *infra*, pp. 55–88.

STATEMENT

This action was brought against the United States in the Court of Claims to recover the value of supplies which petitioner, a Philippine citizen, allegedly furnished to Filipino guerrilla forces during the Japanese occupation of the Philippines in World War II. The allegations of the petition filed in the court below on April 26, 1951 may be summarized as follows:

Pursuant to the authority of the Philippine Independence Act (Pet. App. 2a–4a), and Section 1(12) of the Ordinance appended to the Philippine Constitution, App. C, *infra*, pp. 81–82, the Philippine Army was called into the service of the armed forces of the

United States in the Philippines by an order of President Roosevelt, dated July 26, 1941 (R. 1). After the fall of Bataan and Corregidor in 1942, "elements of the United States Army Forces in the Far East known in short as USAFFE" banded into guerrilla units and continued, until the liberation of the Philippines, to wage military operations against the Japanese "with the express or implied authority of the Commander-in-Chief" USAFFE (R. 1). Among these guerrilla units was the so-called 1st Bn. 76th Infantry Regiment, 72nd Division, 7th Military District, which, in order successfully to prosecute military operations against the Japanese and "in accordance with the Rules of Land Warfare published by the United States War Department and/or in accordance with the express or implied authority of the Commander-in-Chief," USAFFE, through its authorized officers, "requisitioned, commandeered, and otherwise legally procured foodstuff and food supplies, equipment, goods and merchandise" from various Filipino civilians, including petitioner (R. 2, 3). At various times from September 1942 to January 1945, petitioner delivered to "authorized officers" of this guerrilla unit goods having a reasonable market value of $119,765.75 for which he was given receipts. The petition alleges that it was "clearly understood and agreed at the time" between the various Filipino guerrillas and the petitioner that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army (R. 3).

The petition also states that petitioner's claim was denied by the United States Army Claims Service on June 21, 1948; that petitioner's right to recovery was based on "implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof;" and that petitioner resided in the Philippines at the time his claim accrued and has remained there throughout the Japanese occupation when the United States courts were inaccessible to him (R. 3, 4).

The United States' answer denied the main factual allegations of the complaint (R. 10, 11). The answer also raised three affirmative defenses: (1) that the claim presented by petitioner to the Army Claims Service "was supported by false and fraudulent receipts", that petitioner "knowingly and deliberately filed the claim in an attempt to defraud the United States," and accordingly that the claim violated 28 U. S. C. 2514 and was forfeited to the United States; (2) the court lacked jurisdiction of a claim which was against the Philippine Government, not against the United States, since it was based on alleged requisitions by guerrillas who were part of the Philippine Army; and (3) that the action was not commenced within the six-year statute of limitations (28 U. S. C. 2501) applicable to Court of Claims actions and hence was barred (R. 11, 12). Thereafter, the United States, expressly reserving the other affirmative defenses, including the defense of fraud, moved for judgment on the pleadings on the ground that the claim, if any, was against the Republic of the Philippines and not against the United States (R. 14).

The Court of Claims, in a *per curiam* order, dismissed the petition on the authority of *Logronio* v. *United States*, 132 C. Cls. 596. In *Logronio*, which was a suit by a Filipino guerrilla for back pay under the Missing Persons Act (56 Stat. 143, 50 U. S. C. App. 1001), the Court of Claims had held that the Filipino guerrillas, recognized or not, never became members of the Army of the United States, were not entitled to the pay and allowances of such members, "nor were they authorized to bind the United States in any respect". 132 C. Cls. at 601.[1]

SUMMARY OF ARGUMENT

The court below held that the United States Government is not responsible to individual Filipinos for goods allegedly furnished by them to Filipino guerrillas for their use during the Japanese occupation of the Philippine Islands in 1942–1945. The

[1] The *per curiam* order below is the fourth decision of the Court of Claims on the status of the Filipino guerrillas. In *Victorio* v. *United States*, 91 F. Supp. 748, the court dismissed a petition seeking to recover from the United States for cattle furnished Filipino guerrillas, basing its holding on the ground that the guerrillas were part of the Philippine Army, not part of the American Army. On a motion for a new trial the court, on the basis of a 1918 statute relating to the use of the Philippine territorial militia, reversed itself and granted permission to file an amended petition. *Isidro Victorio* v. *United States*, 122 C. Cls. 708. After further consideration, the court decided that the 1918 statute had no relevancy to the status of Philippine troops during World War II, reaffirmed its original view that the United States was not liable for materials furnished to Filipino guerrillas, and expressly overruled the second *Victorio* decision. *Logronio* v. *United States*, 132 C. Cls. 596. The decision below followed the *Logronio* holding.

holding was fully justified by the fact that members of the Philippine Army, regulars or irregulars, were never authorized to procure or make other commitments on behalf of the United States.

I. The petitioner states that his "right to recovery is based on implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof." (R. 3). It is well recognized that no one can bind the United States Government in procurement matters unless he has been expressly or impliedly authorized by the United States to do so.

II. No express authority was ever conferred upon members of the Army of the Commonwealth of the Philippines to commandeer or requisition supplies for the account of the United States Government. The petition in the court below makes no factual allegation regarding the existence of any express authorization directed to the various Filipino guerrillas to whom the petitioner says he delivered supplies.

III. The burden of the petitioner's contention is that these various Filipino guerrillas had a definite status in relation to the Army of the United States, and that by giving them that status the United States Government conferred upon them, by implication, the authority to requisition supplies for the account of the United States. The basic issue in dispute is whether the arrangements between the United States and the Army of the Commonwealth of the Philippines were such as to confer, by implication, authority from the United States Government to the individual Filipino soldiers to requisition or commandeer supplies directly

for the account of the United States Government. Our position is that these arrangements did not do so.

A. The general arrangements between the United States and the Philippine Army during the war reflected the increasing independence of the Philippine Islands. These Islands, which were acquired by the United States as a territory, were granted a large measure of autonomy by the Independence Act of 1934. Under the Philippine Constitution adopted in 1935, the Commonwealth of the Philippines established its own army to provide for the defense of the Islands both during the period in which the United States retained sovereignty and after complete independence which was promised in ten years' time. This army was an independent military force responsible to the President of the Philippines and had no connection whatever with the armed forces of the United States.

B. Under the Independence Act the United States retained the right to call whatever organized military forces the Philippine Government might have into the service of those armed forces which the United States had in the Philippine Islands. In 1941 this was done. It is clear from the legislation under which this action was taken and from contemporaneous statements by the responsible officers that the Philippine Army was to retain its status as an independent national force and was not to be merged into the Army of the United States. As a matter of fact, it kept its national status and was comparable to units of foreign armies fighting under General MacArthur's

command. Two or three particular benefits made available to Filipino soldiers by the United States Congress did not alter this general position of the Philippine Army.

In sum, the overall arrangements between the United States and the Philippine Army did not make the Philippine Army part of the Army of the United States.

C. Whatever the status of the Philippine Army might have been in general, it is clear that with respect to procurement and the creation of financial liability the arrangements with the United States were such that no one in the Philippine Army could contract directly on behalf of the United States. During the years 1941 to 1946, Congress made separate appropriations for the benefit of the Philippine Army, providing that such funds should be turned over to the Government of the Commonwealth of the Philippines to be disbursed by its disbursing officers with the approval of the Commanding General of United States Army Forces in the Far East. All expenditures made by the Philippine Army were to be made from funds in the Philippine Treasury. The United States provided assistance on a government-to-government basis, advancing funds to the Philippine Treasury and authorizing or approving the use of those funds for various expenditures of the Philippine Army. This procedure was followed both during the war and during the post-liberation period. Following the complete independence of the Philippines in 1946, the United States continued to advance

sums to the Philippine Government to meet back pay and other claims arising from guerrilla activities of the Philippine Army.

Under these arrangements any procurement by the Philippine Army, no matter by whom it was authorized, created at most an obligation on the Philippine Treasury. Petitioner contends that the guerrillas who allegedly procured supplies from him were in the Philippine Army. Rather than conferring upon them the authority to obligate the United States, that status establishes that they had no authority to create a direct liability against the United States.

IV. This case involves problems in an area where the Court should be slow to depart from the position adopted by the Executive Branch. For ten years claims of this kind have been treated by advancing funds to the Philippine Government and approving disbursement from those funds for claims that appeared to have merit. Over one and a half million separate claims have been handled in this fashion. International agreements have been reached between the now sovereign Philippine Government and the United States covering both the funds advanced and the return of the undisbursed balance. This return has not yet taken place. Recently, the Philippine Government took up through the State Department a series of additional claims against the United States on behalf of members of the Philippine Army, for additional pay for all enlisted men during the war and for other pay and allowances arising out of their status at that time. These claims are now under consideration at the diplomatic level. Under these

circumstances, the Court should be slow to depart from the position taken by the Executive Branch.

ARGUMENT

I. NO ONE CAN BIND THE UNITED STATES IN PROCUREMENT MATTERS UNLESS HE IS EXPRESSLY OR IMPLIEDLY AUTHORIZED TO DO SO

Petitioner's claim is based on implied contracts arising from action taken or receipts given by various Filipino guerrillas. Petitioner alleges that, on more than a hundred occasions in the period 1942 to 1945 (R. 5–9), cows, dried fish, rice or other supplies and material were "legally procured" from him by various "authorized officers".

The claim being on a contract, the necessity of an allegation that the guerrillas were authorized officers of the United States is clear. It is well settled that the United States can be held liable only on contracts made by officers acting under valid delegations of authority. *United States* v. *North American Transportation & Trading Co.*, 253 U. S. 330; *Sutton* v. *United States*, 256 U. S. 575; *Eastern Extension, Australasia & China Telegraph Co.* v. *United States*, 251 U. S. 355; *United States* v. *McDougall's Administrator*, 121 U. S. 89; *Hodges* v. *United States*, 125 C. Cls. 405; *Caltex (Philippines), Inc.* v. *United States*, 129 C. Cls. 605, certiorari denied, 348 U. S. 926.

The rule is clearly stated in *United States* v. *North American Transportation and Trading Company*, 253 U. S. 330, 333:

> But although Congress may have conferred upon the Executive Department power to take

land for a given purpose, the Government will not be deemed to have so appropriated private property, merely because some officer thereafter takes possession of it with a view to effectuating the general purpose of Congress. See *Ball Engineering Co.* v. *J. G. White & Co.*, 250 U. S. 46, 54–57. In order that the Government shall be liable it must appear that the officer who has physically taken possession of the property was duly authorized so to do, either directly by Congress or by the official upon whom Congress conferred the power.

This Court has emphasized that the contracting authority of an officer of the Federal Government must derive directly from the scope of his employment and be actual in character, not implied from appearances or the circumstances of a particular case. *United States* v. *North American Transportation & Trading Co., supra.* An officer's authority to make implied contracts is of course no broader than his power to bind the United States by formal agreement. *Sutton* v. *United States, supra; Baltimore and Ohio R. R.* v. *United States,* 261 U. S. 592, 596, 597. Consequently, even if the guerrilla officers had been agents of the United States, they could not have bound the United States without authorization. *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U. S. 579, 585; *Hooe* v. *United States,* 218 U. S. 322, 335–336; *United States* v. *North American Transportation & Trading Co.,* 253 U. S. 330, 338; see also *Hodges* v. *United States, supra.* This Court has stressed that a contractual obligation on the part of

the United States "is not to be presumed in the absence of any action taken by the government or on its behalf indicating such a purpose." *United States* v. *Algoma Lumber Co.*, 305 U. S. 415, 421.

In short, the undisputed premise underlying the instant case is that no one can bind the United States Government on a contract express or implied unless that individual has been expressly or impliedly authorized to do so.

II. NO EXPRESS AUTHORITY WAS EVER CONFERRED UPON THE FILIPINO GUERRILLAS TO PROCURE SUPPLIES FOR THE ACCOUNT OF THE UNITED STATES

Although the petition in the Court of Claims states the legal conclusion that the alleged requisitioning was in accordance with "express or implied authority" and was done through "authorized officers" of the guerrilla unit, it contains no factual allegation of any express authority. The petition does not refer to any particular statute, order or communication which expressly conferred authority upon the particular officers involved. Petitioner's brief makes it clear that he is not alleging or relying upon express authority.

It is his contention that as a matter of law guerrilla officers in the Philippine Army were authorized to requisition supplies and thereby make the United States Government liable. He urges that statutes, rules and regulations of which the court can take notice placed all members of the Philippine Army in such a position vis-a-vis the United States that *by implication* the United States conferred upon them the authority to requisition supplies for the account of the

United States. The thrust of petitioner's argument is that the various Filipino guerrillas had a definite status in relation to the Army of the United States, and that by giving them that status, or by allowing them to have it, the United States Government conferred upon them the implied authority to bind the United States. The guerrillas who purportedly contracted with petitioner had no express authority from the United States, and petitioner does not allege that they had.

III. THE ARRANGEMENTS BETWEEN THE UNITED STATES AND THE PHILIPPINE ARMY WERE NOT SUCH AS TO CONFER BY IMPLICATION AUTHORITY UPON FILIPINO SOLDIERS TO REQUISITION SUPPLIES FOR THE ACCOUNT OF THE UNITED STATES

In deciding whether the arrangements between the United States Government and the Philippine Army guerrillas were such as to confer authority upon the guerrillas to obligate the United States, it is necessary to understand first what the overall relationship was between the United States and the Philippine Army and secondly what the relationship was with respect to the particular matter at issue. It is petitioner's basic contention that by virtue of the phrasing used in placing the Philippine Army under the control of General MacArthur and by virtue of two or three benefits conferred directly upon Filipino soldiers the Philippine Army became a part of the Army of the United States for all purposes. However, the Court of Claims, after extensive consideration and reconsideration, concluded that upon recognition guerrilla units became part of the Philippine Army, that that

Army was not a part of the Army of the United States, and that members of the Philippine Army had no authority, express or implied, to bind the United States in any respect.

This conclusion, we submit, is fully supported by the various pertinent materials. The origin and history of the Philippine Commonwealth Government permit no doubt that the Philippine Army, before it was called in 1941 into the service of United States Armed Forces in the Philippines, was organized and solely maintained by a separate governmental entity, which was not a part of the Federal Government and which had, at that time, many of the attributes of an independent state. Hence, prior to 1941, its officers or men could not have bound the United States to pay for requisitions of supplies consumed by Philippine troops.

Moreover, when Congress provided for the utilization of Filipino troops in the defense of the Islands in the 1934 Independence Act leading to the Commonwealth Government, and when the President called those troops into the "service" of United States forces engaged in that defense in 1941, both intended that Philippine national forces would retain their separate national identity with their own organization, promotion lists, and code of military law, and that they would serve with, but not become a part of, the Army of the United States in the Philippines. After the Filipino forces were called to the defense of the Philippines, they were in fact treated in all respects as a separate national force serving with but not as a part

of the Army of the United States. This being the case, the United States is not bound by contracts made by Filipino irregulars who were retroactively recognized as part of the Philippine Army, but who were never recognized by the United States as a part of the Army of the United States.

A. THE PHILIPPINE ARMY WAS ENTIRELY INDEPENDENT OF UNITED STATES FORCES BEFORE IT WAS CALLED INTO THE SERVICE OF UNITED STATES ARMED FORCES IN THE PHILIPPINES IN 1941

The Filipino Army that was called into the service of United States Armed Forces in the Philippines in 1941 was created and maintained by the Commonwealth of the Philippines, a government which had already attained some degree of independence and was largely autonomous in its internal affairs. The origin and history of the Philippine Commonwealth leave no doubt that prior to 1941 its soldiers could not have contracted on behalf of the United States.[2]

1. *The Creation of the Commonwealth Government*

The United States first acquired sovereignty over the Philippine Islands in 1898 as a result of the Treaty of Paris (30 Stat. 1754; 31 Stat. 1942). From the time of their acquisition from Spain, the Islands had the status of a federal territory, governed by a governor general appointed by the President of the United

[2] Although the Court of Claims made no findings of fact in dismissing the petition in the present case, the facts underlying the present issue, which are not basically in dispute, are set forth in *Victorio* v. *United States*, 91 F. Supp. 748 (C. Cls.), and *Logronio* v. *United States*, 132 C. Cls. 596, as well as in the briefs before this Court.

States, and Philippine residents were United States nationals, although not citizens of the United States. (32 Stat. 691.)

With the passage by the Congress of the Philippine Independence Act in 1934 and the adoption by the Philippines of a Constitution pursuant to that Act in 1935, the status of the Philippines changed to a commonwealth largely autonomous in its internal affairs. The Independence Act enacted by Congress on March 24, 1934 (48 Stat. 456), provided for the immediate drafting of a Philippine constitution, and the prompt establishment of a republican form of government, a popularly elected president, and a representative legislative within the Philippine Islands. Section 10 of the Act provided that the Philippines would receive full independence within ten years after the inauguration of the new government under the Constitution. While the United States retained sovereignty over the Islands during the period prior to full independence, the Act resulted in the creation of what has been called a "semisovereign state with a personality in international law separate and distinct from the United States" (Report of Philippine Independence Commission to the Philippine Legislature, 78 Cong. Rec. 5146–5147); see *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 677.

Under the Independence Act, the new constitution, and implementing enactments, the United States retained control over Philippine foreign affairs, and "citizens of the Philippine Islands" continued to owe allegiance to the United States until complete independence was achieved. Decisions of the Philippine courts construing laws of the United States were also

subject to review by this Court. The practical effect of the new Philippine constitution, however, was to give the popularly elected Philippine government "autonomy" in local affairs insofar as its actions were consistent with the Philippine Constitution. H. Rept. 806, 72d Cong. 1st Sess.[3] As this Court recognized in *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652 (id. at 676):

> Thus by the organization of the new Philippine government under the constitution of 1935, the Islands have been given, in many aspects, the status of an independent government, which has been reflected in its relations as such with the outside world.

See also *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 319–320; *Bradford* v. *Chase National Bank of City of New York,* 24 F. Supp. 28, 35 (S. D. N. Y.); and Hackworth, *Digest of International Law,* Vol. I, p. 493; Vol. II, p. 176.

Under Section 6 of the Independence Act, imports from the Philippines to the United States were subject to customs levy, and Section 8 of the Act required that Philippine citizens be treated as aliens (not as United States nationals) for purposes of immigration and naturalization. Cf. *Barber* v. *Gonzales,* 347 U. S. 637. The powers reserved by the United States during the interim period before complete independ-

[3] House Report 806 (72d Cong. 1st Sess.) on H. R. 7233, a bill that became the 1934 Independence Act without material change, states that the Act gave the Commonwealth "complete autonomy as to domestic affairs, subject only to certain reservations intended to safeguard both the sovereignty and the responsibilities of the United States" (75 Cong. Rec. 6445–6448).

ence were retained primarily to protect the interests of the United States citizens within the Philippines, as well as the rights of Philippine citizens themselves embodied in the new constitution. See *Victorio* v. *United States*, 91 F. Supp. 748, 749, 750; *Logronio* v. *United States*, 132 C. Cls. 596, 599–605.

2. *The Creation of the Philippine Army*

Consistent with the Commonwealth's special status, the Philippine Constitution, adopted in 1935, provided for the establishment and organization of the Armed Forces of the Philippines.[4] Section 2 of Article II, a part of the Constitution's "Declaration of Principles," provided that all Philippine citizens were obligated to render military service, and the President of the Philippine Government was designated as Commander-in-Chief of the Philippine Armed Forces (Article VII, Phil. Const., section 11 (2)). (App. C, *infra*, p. 85.) The National Defense Act enacted by the Philippine Legislature in 1935 (Commonwealth Act No. 1, December 21, 1935) was designed to carry into effect the constitutional provisions providing for the establishment of Philippine military forces. Title 2 of that Act (App. C, *infra*, p. 86), dealing with mili-

[4] Congress had provided in 1918, when the Philippines still had the status of a United States territorial possession, that members of the Philippine militia "may be called into the service of the United States" and "members thereof may be drafted into said service" and that the members when called or drafted would be "upon the same footing" as United States national guardsmen (Act of January 26, 1918, 40 Stat. 432, 32 U. S. C. 84 1940 Ed.). The Philippine militia, a shortlived organization organized in 1917–1918, was no longer in existence at the time the Islands became a commonwealth in 1935. 75 Cong. Rec. 7856, 7858.

tary organization, established an "Army of the Philippines" consisting of a regular and reserve force. Section 22 (App. C, *infra*, p. 87) provided that all commissioned officers in the army must be Philippine citizens and that priority of appointment should be given to graduates of the Philippine Military Academy. This Act also established a general staff corps headed by a chief of staff reporting directly to the President of the Commonwealth, and provided in detail for the organization of the Philippine Army and the appointment, training, and promotion of army personnel (App. C, *infra*, pp. 85–88).

Beginning with the passage of the National Defense Act in 1935, the Commonwealth Government undertook to organize and equip a Philippine army as an entirely separate and independent military force adequate to provide for the defense of the Philippine Commonwealth against "invasion, insurrection, or rebellion" (Phil. Const. Article VII, Section 11 (2)).[5] By 1940, this army had developed into a military force of approximately ten regular and reserve divisions, with its own equipment and officers, and supporting air and naval detachments. Louis Morton, *The Fall of the Philippines—The War in the Pacific: United States Army in orld War II*, p. 13.[6]

From 1935 to 1941 General Douglas MacArthur, who had retired as United States Army Chief of Staff,

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[5] The Philippine Legislature appropriated funds for the support of the Philippine Army in each year from 1937 to 1941. Commonwealth Acts Nos. 245, 300, 446, 555, 654, Vols. 2–5, Public Laws of the Commonwealth.

[6] This book, the official Army history of the early stages of the Philippine campaign, is cited hereafter as "Morton". Petitioner

served at the request of President Quezon as military adviser to the Philippine Government. While there was of course cooperation between the Philippine Department, which was the United States Army command in the Islands, and the Office of the Military Advisor, there was no official connection between the two. Morton, p. 9. In fact, in the spring of 1941, the commanding general of the U. S. Philippine Department felt obliged to request War Department permission to include representatives of the Commonwealth Government in conferences directed toward improving the defense of the Islands. Morton, p. 15.[1]

Both the nature of the Commonwealth Government and the history of the Philippine Army, as we have detailed them, leave no doubt that that army which

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has reprinted selected excerpts from this work. (Pet. Br. App. pp. 24b–40b). A less broken account conveys a clearer picture. The origin and development of the Philippine Commonwealth Army and the events leading to the calling of that Army to the defense of Philippines are covered in Chapters I and II of Morton. For the convenience of the Court ten copies of this book have been made available at the Clerk's office for the use of the Court.

[1] The complete separation of the two armies is demonstrated by the way in which each treated service in the other. Upon the establishment of the Philippine Army, the President of the Commonwealth could fill vacancies in any commissioned grade with officers of the Officers' Reserve Corps, U. S. Army, but only with such of those officers as prior to their appointment in the Army of the Philippines had "legally and honorably severed their connection with the active elements of the Army of the United States * * *". Philippine Commonwealth Act No. 1, Title II, Article I, Sec. 22 (c), App. C, *infra*, p. 87.

On the American side, the Judge Advocate General held that an officer in the Officers' Reserve Corps, Army of the United States, could not retain that commission if he accepted a Philippine Army commission for the reason that the offices were inconsistent. JAG 291.2, January 17, 1936.

was "called into the service" of the United States Armed Forces in the Philippines in July 1941 had been organized and maintained by a separate political entity. Prior to July, 1941 the status of the Philippine Army was such that its members had no authority whatsoever vis-a-vis the United States. Petitioner does not contend that at that time soldiers of the Philippine Army had any more authority to bind the United States than did soldiers in the army of a foreign government. It is petitioner's contention that the military orders and commands related to placing the Philippine Army under the unified command of General MacArthur merged the Philippine Army into the Army of the United States and that the United States thereby conferred, by implication, authority upon the Filipino soldier to bind the United States in whatever way an American soldier could. The fact is, however, as we shall now show, that throughout the war the Philippine Army retained its separate national character as an army of the Philippine Government and was never merged with the Army of the United States.

B. THE PHILIPPINE ARMY RETAINED ITS SEPARATE NATIONAL IDENTITY WHILE SERVING WITH UNITED STATES ARMED FORCES IN THE PHILIPPINES

The Philippine Constitution, pursuant to Section 2 (12) of the Independence Act of 1934, expressly recognized the right of the United States prior to complete independence "to maintain military and other reservations and armed forces in the Philip-

pines[*] and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines" (App. C, *infra*, pp. 85–86).[*]

On July 26, 1941, the President of the United States, acting on the recommendations of Secretary Stimson and General Marshall, and recognizing that an "emergency" situation existed in the Western Pacific, stated in a proclamation that:

> * * * under and by virtue of the authority vested in me by the Constitution of the United States, by Section 2 (a) (12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of

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[*] The military forces of the United States in the Philippines in 1941 constituted the Philippine Department of the United States Army, made up of Regular Army units, including Philippine Scout Units staffed by Filipino troops with Filipino and American officers. Petitioner (Br. 12, 13) confuses the Philippine Department, a territorial command or subdivision of the American Army, with the Army of the Commonwealth of the Philippines, an entirely separate military organization. See Morton, p. 9, *et seq.* Following the President's order, a new Command was established, United States Army Forces in the Far East (USAFFE) with General MacArthur recalled to duty as commanding general. The Philippine Department was placed under this command. Philippine Army units were at intervals also placed under the USAFFE command, a process which had not been completed at the time of the Japanese attack on the Philippines, December 8, 1941. See Morton, p. 14, *et seq.*

[*] This provision differed significantly from the 1918 enactment which had been in effect prior to the Independence Act and which authorized the drafting of Philippine militiamen as national guardsmen. See fn. 4, *supra*, p. 18; *infra*, pp. 24–27.

> the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the Armed Forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Commonwealth of the Philippines [6 Fed. Reg. 3825, Pet. 10a].[10]

On the same day, General Douglas MacArthur was designated by the Secretary of War as Commanding General, United States Army Forces in the Far East (USAFFE), with headquarters in the Philippines, and as the general officer referred to in the President's order. Units of the Philippine Army were subsequently called "into the service of the Armed Forces of the United States in the Philippines" by General MacArthur. (Pet. 17a.) App. E, *infra*, p. 99, *et seq.*

The fact that these orders did not merge the Philippine Army into the Army of the United States, as contended by petitioner, is apparent from the legislative authority under which they were made, from contemporaneous statements made by the responsible executive and military authorities, and from the manner in which the two armies actually operated.

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[10] The order provided that it would "take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War." (Pet. 11a.)

1. *The legislative definition of the Army of the United States did not include the Philippine Army*

Congress had defined the constitutional land forces of the United States (the "Army of the United States") as consisting of the "Regular Army, the National Guard of the United States, and the Army Reserve" (10 U. S. C. 1a, 1b, App. A, *infra*, p. 55).[11] In addition, the National Guard of the "several states and territories" becomes a part of the Federal Army "when in the service of the United States." The term "territories" was defined to exclude the Philippines. (32 U. S. C. 4c.)

Congress had provided in 1918 that the Philippine militia, which had been organized in 1917, could be "called into the service of the United States" and that "members thereof may be drafted into said service" in the "manner" and upon the same "footing" as members of the National Guard when in Federal service. (32 U. S. C. 84, 1940 Ed., App. A, *infra*, p. 57.) The Philippine territorial militia, however, was no longer in existence when the Commonwealth Government was founded in 1935 (75 Cong. Rec. 7856, 7858; Quezon, *The Good Fight*, p. 165; fn. 4, *supra*, p. 18).

As indicated above the Philippine Independence Act of 1934 contemplated a gradual transition towards complete independence over a ten-year period, after which the Philippine Government would assume full control over its international relations and sole re-

[11] This is an amendment of a former definition (10 U. S. C. 2) originating in 1916 (39 Stat. 166) which was modified but not substantially changed in 1950 (64 Stat. 271).

sponsibility for the defense of the Islands. During the interim period, however, the United States continued to bear heavy responsibilities in the Western Pacific, among them the defense of the Philippines. The Independence Act (and pursuant thereto, the Philippine Constitution) preserved the right of the United States to maintain "armed forces" in the Philippines, and "recognized" the United States' right to "call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines." App. C, *infra*, pp. 85–86.

The purpose of this provision is apparent from its language. In carrying out its responsibility of defending the Philippines, the United States retained the right of maintaining troops within the borders of what in many respects had become, or was fast becoming, an independent country. In the event of threatened aggression the United States was entitled to call upon the organized forces of the Philippine Government to assist American forces stationed in the Philippines in defending the Islands.

Since the Philippines were no longer a federal possession, however, the Independence Act, unlike the 1918 statute, did not provide that such forces would "in all respects while therein be upon the same footing with members of the National Guard so called or drafted * * *" 32 U. S. C. 84, 1940 ed., App. A, *infra*, p. 57. This contrast between the Independence Act and the earlier language indicates that Congress did not intend members of the Philippine Army, if

called up, to have the same status as American soldiers."[12].

Further indication that Congress did not authorize the Philippine Army to become part of the Army of the United States is the apparent territorial restriction on where the Philippine forces could be used. The 1918 statute provided that Philippine militia could be called "into the service of the United States" and made clear that Filipino troops could be taken into the Army of the United States for service anywhere. App. A, *infra*, p. 37. The Independence Act was quite different. It required the Philippine Islands to recognize the right of the United States to maintain armed forces in the Philippines and, upon order of the President, to call into the service *of our armed forces in the Philippines* all military forces organized by the Philippine Government (Pet. Br. App., p. 2a). The Philippine units were not to be in the service of

[12] Under Article I, Section 8 of the Constitution, Congress alone has the power to give a military unit the status of being part of the Army of the United States. Its definition of the Army of the United States (10 U. S. C. 1a, 1b) has never at any time included the Commonwealth Army. Congress also has the sole authority to provide for organizing, arming and disciplining the militia "and for governing such Part of them as may be employed *in the Service of the United States*". Art. I, Sec. 8. (Emphasis added.) This constitutional phrase has been used in statutes relating to the calling up of the National Guard (as well as in the earlier statute covering the calling up of the Philippine militia) since the early 1900's. Avoidance of the Constitutional language in the Philippine Independence Act, by itself, indicates that Congress in that Act did not intend to amend the definition of Army of the United States so as to include the organized Philippine forces when called to the defense of the Philippines.

the United States, subject to use anywhere, but in the service of whatever armed forces in the Philippines the United States should maintain. Thus, by statute, Philippine units called up under the Independence Act had a different status from units within the Army of the United States.

2. *At the time when the Philippine units were called up, the Philippine Army was intended to retain its separate national status*

Thus far, we have urged that the Philippine Constitution and the Independence Act contemplated that Philippine troops would retain their national identity if the United States called upon the Philippine Commonwealth Army to aid it in the defense of the Philippines. In addition, the contemporaneous documents make it clear that the Executive meant to preserve the national character of the Commonwealth troops when in July 1941 they were called into the "service of the United States Armed Forces." The understanding reflected by these documents, as well as the steps taken by the Executive Branch to preserve the Commonwealth troops' identity as a national military force when they were called up in 1941, constitute an authoritative interpretation of the statute fully supporting the conclusion of the Court of Claims. Consequently, even assuming that the Executive had the power to call up the Filipino forces *as part of the American Army,* the clear fact is that it did not exercise that power, but rather acted to preserve the separate national identity of the Commonwealth Army.

In the period immediately preceding and following the President's order, every responsible official who had occasion to refer to the calling up of the Commonwealth Army expressed the clear intention that the Philippine forces would retain their national identity.

The earliest recommendation to call up elements of the Philippine Army came from General Grunert, Commanding General, Philippine Department (a part of the American Army), in April 1941. He prepared the plans on which the action was based. His plans provided "that the mobilization process and machinery will remain in the hands of the Philippine Army." App. B, *infra*, p. 82.

In the War Department Memorandum which recommended the action taken by the President, General MacArthur's views were summarized in the following terms:

> "In a personal letter to the Chief of Staff, dated July 7, 1941, General MacArthur concurs, in general, with the views of the Commanding General, Philippine Department. He states the importance of having the Philippine Army retain its complete identity and operation under its own laws and regulations." [App. B, *infra*, p. 82.]

This memorandum was approved by the Chief of Staff, General George C. Marshall, and by the Secretary of War prior to the issuance, by the President, of his order of July 26, 1941. App. B, *infra*, p. 84.

Shortly after the Presidential order, and the Sec-

retary of War's order of the same day designating General MacArthur as the general officer who would ta' e command of both the Philippine Department and of Philippine Army units called up, General MacArthur's headquarters issued a public announcement stating:

> "All Philippine elements which come under American control will maintain their national integrity. They will retain their own uniforms, their own scale of pay, their own promotion list, their own ration, and their own code of military law." [H. Doc. 111, 78th Cong., 1st Sess., 1943, App. B, *infra*, p. 78.]

In November 1941 the Chief of Staff, General Marshall, appeared before Congress to explain the status of the Philippine Army and the necessity of a special appropriation:

> * * * This Army, being an Army of the Philippine Commonwealth Government, cannot under existing law be financed from military appropriated funds, even though called into service with the armed forces of the United States. [Hearings before the Subcommittee of the House Committee on Appropriations on the Third Supplemental National Defense Appropriation Bill for 1942, November 18, 1941, 77th Cong., 1st Sess., p. 47. App. B, *infra*, p. 78.]

These contemporaneous statements by the very officials who were responsible for issuing the orders which placed the Philippine Army under the command of General MacArthur provide conclusive evidence that the United States had no intention of making the

Philippine Army an arm of the Federal Government.[12a] This is particularly significant since petitioner relies upon these very orders as merging the Philippine Army with the Army of the United States.

3. The two armies were not in fact merged

General MacArthur had recommended that the Philippine Army should keep its national identity as an army of the Philippine Government. General MacArthur was placed in command over both the Philippine Department (of the American Army) and over those units of the Philippine Army which were to be called into service under the President's order. It is not surprising that his recommendation as to the separate identity of the two armies was fully carried out.

Units of the Philippine Army maintained their separate identity, not only as a distinct unit but as a part of the Philippine Army. They kept their own uniforms. They kept their own organizational structure. For example, the Philippine Army has not only first and second lieutenants but also third lieutenants (App. C, *infra*, p. 87); a rank to which nothing in the American Army corresponds. Such officers were not third lieutenants in the Army of the United States—there was no such thing—but third lieutenants in the Philippine Army.

[12a] See also the statement of the Resident Commissioner of the Philippine Islands to the United States, October 9, 1941: "I understand they are not considered Federal troops; they are a separate unit, but under the United States Army." App. E, *infra*, p. ~~99, et seq.~~ 106.

Members of the Philippine Army were not subject to the same military laws as applied to those in the American Army. Until war was declared the Philippine Army had no courts-martial. Even after units of the Philippine Army were placed under General MacArthur's command, Philippine Army headquarters was responsible for discipline and punishment. This was in deference to the fact that "the Philippine Army retained its national integrity". Morton, p. 28.

In discussing the status of the Filipino guerrillas the Supreme Court of the Philippines said that they:

> * * * became members of the Philippine Army amenable to the [Philippine] Articles of War. The Bolo Area [unit] as has been seen, was a contingent of the 6th Military District which, as has also been pointed out, had been recognized by and placed under the operational control of the United States Army in the Southwest Pacific [Command]. [*Ruffy* v. *Chief of Staff, Philippine Army,* 75 Phil. Rep. 875, 883.]

During the war and after the liberation the United States continued to recognize the separate status of the Philippine Army. On May 7, 1942, General Jonathan Wainwright tendered "the formal surrender of all American *and Philippine Army troops* in the Philippine Islands," to the Japanese forces (Pet. Br. App. p. 57b, emphasis added), and the Philippine Commonwealth Government was forced to leave the Philippines as a result of the Japanese occupation of the Islands. Although all organized resistance to the Japanese forces ceased within a short time after Gen-

eral Wainwright's surrender, many Filipino and American individual soldiers refused to abandon the struggle and, retreating into mountainous regions, banded into irregular units to continue the fight against the Japanese invader. These guerrilla bands, which for the most part were out of touch with organized American forces, obtained their supplies from the local populace. After the Commonwealth Government was re-established in the Islands in October 1944 following the American liberation, President Osmena issued Executive Order 21 (Pet. Br. App., pp. 59b–61b) declaring that persons who were "actively serving in recognized military forces in the Philippines are hereby considered to be on active service *in the Philippine Army.*" A recognized military force was one under a commander who had been appointed or recognized by the Commander-in-Chief Southwest Pacific Area (General MacArthur). This order, relied on heavily by petitioner, demonstrates, on the contrary, the separate identity of the Philippine Army.

President Osmena's order did not intend to, and could not, delegate authority to the American commander to recognize the Philippine guerrillas as part of the Army of the United States, for his order, of course, could not determine a status which is entirely governed by American law.

Under President Osmena's order a large number of Philippine guerrilla units were recognized by General MacArthur as part of the Philippine Army. In every case the orders stated that the guerrillas were recog-

nized as "officers and enlisted men of the Philippine Army" (App. B, *infra*, pp. [illegible]; see *Logronio* v. *United States*, 132 C. Cls. 596, 611, 612).

As a matter of fact the Philippine Army was never merged into the Army of the United States, but was a separate military force identifiable at all times and operating under different rules, in different uniforms, and in most cases, of course, in a different language. Morton, p. 27. Thus the Philippine Army was comparable in its relation to the American Army to those Australian, British, Dutch and Chinese units which, although supplied by the United States, retained their national identity while fighting under General MacArthur's command in the Pacific.[13] Again, in the Korean conflict, similar relationships were established between General MacArthur and the South Korean, Brazilian, Turkish and other units which fought under his command and were supplied partially from American sources but in each instance retained their national identities.

4. *Particular benefits conferred upon Filipino soldiers by the United States did not convert the Philippine Army into the Army of the United States*

In 1942 and 1943 the Attorney General concluded that the National Service Life Insurance Act and the Missing Persons Act should be so construed that their benefits should be available to members of the Army of the Philippines. 40 Ops. Att'y Gen. 185,

[13] See Robert Ross Smith, *The Approach to the Philippines, The War in the Pacific, United States Army in World War II*, pp. 14–16.

281. Although throughout the war the Filipino troops were paid by their own government, the United States was turning over funds to the Commonwealth Government with which to meet the legitimate costs of the Philippine Army. This was done for the entire period in which the Philippine Army was fighting with the United States forces. The Attorney General's opinions permitted the United States to make these benefits available directly to the Filipino soldiers without requiring legislative action by the Philippine Government.[13a]

[13a] Prior to the Attorney General's first opinion, the War Department had already informed the Commanding General in the Philippines that members of the Philippine Army Air Corps were entitled to National Service Life Insurance; radiogram applications for insurance had been received from Cavite, Philippines (letter dated April 22, 1942, from the Administrator, Veterans Administration, to the Attorney General), and on the date of the opinion, April 27, 1942, Corregidor was under seige. Despite some general language in that opinion (40 Ops. Att'y Gen. 185, 187) it was later construed as being a decision that members of the Army of the Philippines were "considered" in active service in the land forces of the United States "for the purpose of granting insurance under the National Service Life Insurance Act of 1940, as amended" 40 Ops. Att'y Gen. 281, 282. Further, the opinion of the Solicitor of the Veterans Administration with which the Attorney General concurred was a narrow one to the effect that such soldiers "are to be considered" in the service "within the meaning of that term as used in the National Service Life Insurance Act". That opinion went on to state:

"It is realized that upon the ultimate independence of the Philippines the question of expense, particularly of future pensions, etc., may be one for political adjustment but in the meantime entitlement is to benefits provided by the United States." (Opinion of the Solicitor, Veterans Administration, March 24, 1942.)

Congress ratified these opinions in the 1946 Appropriations Act (and a 1947 amendment to it), but made it clear that such benefits were an exception. That Act provided:

> * * * service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof, except benefits under (1) * * * (2) * * * (3) * * * [60 Stat. 6, 14; 38 U. S. C. 38; 61 Stat. 455.]

The three exceptions were the National Service Life Insurance, Veterans Administration payments for service-connected disability or death, and payments under the Missing Persons Act.

Those three [14] respects in which the United States Government gave direct benefits to members of the

[14] Petitioner also contends that Philippine guerrillas were considered to have been in the military forces of the United States for the purposes of being eligible for a more expeditious naturalization procedure, citing *Petition of Agustin*, 62 F. Supp. 832, (Pet. Br. 21.) Agustin, however, was not only a guerrilla leader but was later made a colonel in the United States Army, receiving allowances and salary as such.

Philippine Army did not change its status from that of a distinct national force. These benefits did not merge the Philippine Army into the American Army nor did they, by implication, confer upon members of the Philippine Army authority to bind the United States. On the contrary, the language of Congress quoted above makes it explicit that members of the Philippine Army were not to be considered as being part of the American Army for any other purpose.

From the extended discussion above it is apparent that the United States at all times treated the Philippine Army as a distinct national force under the Philippine Government. The Philippine Army was not given such a status that there was, by implication, a conferring of authority upon members of that Army to contract directly on behalf of the United States. The general position of the Philippine Army was one independent of that of the Army of the United States.

C. WHATEVER THE STATUS OF THE PHILIPPINE ARMY IN GENERAL, WITH RESPECT TO PROCUREMENT AND THE CREATION OF FINANCIAL LIABILITY THE ARRANGEMENTS WERE SUCH THAT NO ONE IN THE PHILIPPINE ARMY HAD IMPLIED AUTHORITY TO OBLIGATE THE UNITED STATES.

We have shown that the status of the Philippine Army was comparable to that of an army of a foreign government under the command, for the time being, of an American general. From the differences pointed out, one can safely say that, at the least, it would be a mistake to conclude that the Philippine Army and the Army of the United States were one and the same thing, that Filipino soldiers had the

same rights and powers vis-a-vis the United States that American soldiers had. We would go further and conclude from the general relationship between the United States and the Philippine Army that they were entirely separate entities, and their relationship was akin to that of American and British troops during the war.

It might be urged, however, that the Philippine Army was not in fact the army of a separate government; that it was in an anomalous position; that for some purposes it was treated as though it were part of the American Army and that for other purposes it was not. It could be suggested that to determine the status or authority of the Philippine Army for a particular purpose one must look not at its overall position but rather to the particular purpose to see what authority was conferred upon the Philippine Army in that respect. For instance, it might be that while one could not imply authority in the Filipino soldier to requisition supplies for the account of the United States from the general position of the Philippine Army, one could infer such authority from the particular arrangements that had been made as to procurement and as to the creation of financial liability. This is not petitioner's contention, but it deserves consideration.

A brief inspection of the status of the Philippine Army with respect to procurement and the creation of financial liability may indicate why petitioner has chosen not to focus on this point but rather to contend that if the Philippine Army was treated as part

of the armed forces of the United States for one purpose it must be so for all purposes (Pet. Br. 24).

1. The financial arrangements between the United States and the Philippines provided that, in recognition of the growing independence of the Philippine Government, all procurement by the Philippine Army was to be for the account of the Philippine Government, and that the United States would provide financial assistance on a government-to-government basis. In consequence ~~was that~~ individuals in the Philippine Army, regular or irregular, had no authority to create a direct obligation on the United States Treasurer.

In October 1941 Colonel R. S. Moore, a finance officer, in explaining to Congress why expenditures for the Philippine Army should be exempt from control by the General Accounting Office, pointed out that "The Army of the Philippines is organized, paid, and administered in accordance with Philippine Commonwealth laws and regulations." See App. E, *infra*, p. 99 *et seq.*

In November 1941 General Marshall, in requesting military appropriations, informed Congress that the Philippine Army could not "under existing law be financed from military appropriated funds, even though called into service with the armed forces of the United States" because it was "an Army of the Philippine Commonwealth Government." *Supra*, p. 29; App. B, *infra*, p. 78. Recognizing the special status of the Philippine Army, Congress, when it appropriated $269,000,000 for the support of that Army on December 17, 1941, provided that the funds should

be available "for payment to the Government of the Commonwealth of the Philippines." [15]

The language of this Act is of critical importance. It established the legal framework for all subsequent financial aid to the Philippines. It did not provide that the United States should spend the money for the benefit of the Philippine Army or procure supplies through the Philippine Army. On the contrary, the funds were to be turned over to the quasi-independent Philippine Government. The relevant portion of the Act reads as follows:

> For *all expenses* necessary for the mobilization, operation, and maintenance of the Army of the Philippines, *including expenses connected with calling into the service of the armed forces of the United States* the organized military forces of the Government of the Commonwealth of the Philippines, *and expenditures incident*

[15] A separate appropriation would have been unnecessary if the Philippine Army became, as petitioner claims, merely one more divisional unit of the Army of the United States when it came under United States operational command, for funds for its necessities could have been provided for in, and disbursed from, ordinary Army appropriations enacted in the same legislation.

The separate appropriations for the Commonwealth Army from 1941 to 1946 have further significance when they are compared with the appropriations for the American Army. Appropriations for the American Army are broken down in considerable detail—so much for ordnance, so much for quartermaster, etc. See, *e. g.*, December 1941 Appropriations Act (55 Stat. 810). At the same time, the appropriation for the Philippine Army was a lump sum "for payment to the Government of the Commonwealth of the Philippines." It is at least likely that Congress would have provided a breakdown within the funds for the Philippine Army if it had regarded that force as a unit of the Army of the United States.

> *to pay, allowances, operation, maintenance, and other activities of units* and personnel of said organized military forces, and for the emergency mobilization and training of such forces, may be made without regard to the provisions of law regulating the expenditure of or accounting for funds of the United States but shall be expended and accounted for in a manner prescribed by the President of the United States, $269,000,000, to remain available until June 30, 1943, which shall be available *for payment to the Government of the Commonwealth of the Philippines* upon its written request, either in advance of or in reimbursement for all or any part of the estimated or actual cost, as authorized by the Commanding General, United States Army Forces in the Far East, of necessary expenses for the purposes aforesaid, * * *. [55 Stat. 813 (emphasis added).]

Subsequent appropriation acts continued throughout the war to provide separate appropriations for the expenses of the Philippine Army to be disbursed directly to the Philippine Government. 56 Stat. 628; 57 Stat. 365; 58 Stat. 591; 59 Stat. 401.[16]

Executive Order No. 9011, covering the manner of expending and accounting for these appropriated funds, was issued by the President on January 3, 1942, and is reprinted in Appendix B, *infra*, p. 59. It makes even more clear that expenditures by Philippine officers were to be a claim on the Philippine treasury and that United States funds were to go into the Philippine treasury to be disbursed from there by officers

[16] Only token amounts were appropriated during the period when the Japanese were in control of the Philippine Islands.

of the Philippine Government, acting with the approval of the Commanding General of the United States Army Forces in the Far East. The Executive Order provided:

> Advances or reimbursements made to the Government of the Commonwealth of the Philippines * * * will be accounted for on vouchers evidencing the amounts advanced to or paid as reimbursement to the Government of the Commonwealth of the Philippines, but such vouchers need not be supported by vouchers paid by disbursing officers of the Army of the Philippines.
>
> * * * * *
>
> Necessary expenditures from funds in the Philippine Treasury for the purposes authorized by the act of December 17, 1941, will be made by disbursing officers of the Army of the Philippines on the approval or authority of the Commanding General, United States Army Forces in the Far East * * * and such expenditures will be accounted for in accordance with procedures established by Philippine Commonwealth laws and regulations. [7 F. R. 145, App. B, *infra*, pp. 59–60.]

It is difficult to see how the United States could have made it more explicit that expenditures "by disbursing officers of the Army of the Philippines" were to be made "from funds in the Philippine Treasury."

To be sure, funds in the Philippine Treasury advanced by the United States could be expended only "on the approval or authority" of the Commanding General USAFFE. The United States retained this power to make sure that aid given was used only for the purposes authorized in the statute. The United

States has retained comparable authority to review economic and military assistance given to other governments." While giving great responsibility to the Philippine officers, the United States did not give them an absolutely free hand to use as they saw fit funds advanced by the United States to the Philippine Government.

Moreover, since, as against the funds advanced to the Philippine Treasury, the United States expressly retained the right of approving expenditures, it hardly

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" Section 142 (b) of the Mutual Security Act of 1954 (22 U. S. C. 1852 (b), a revision of Section 115 (b) (6) of the Economic Cooperation Act of 1948, 22 U. S. C. 1513) provides that the "counterpart" funds resulting from United States aid and held by states receiving assistance from the United States under that Act can be disbursed only for purposes agreed to by the United States. The Economic Cooperation Agreement between the United States and the United Kingdom, as a result of this provision, provides that counterpart funds can be disbursed by the British Government only "for such purposes as may be agreed from time to time with the Government of the United States of America" (Art. IV (6), TIAS 1795, signed July 6, 1948, 62 Stat. 2596, 2600). The Agreement with France contains the same provision (Art. IV (6), TIAS 1783, signed June 28, 1948, 62 Stat. 2223, 2229). Similarly, Section 142 (a) (10) of the 1954 Act (22 U. S. C. 1852 (a) (10)) requires foreign states receiving defense aid from the United States to "permit continuous observation and review by United States representatives of programs of assistance authorized under this title, including the utilization of any such assistance * * *". Pursuant to this requirement, Article VIII of the Mutual Defense Assistance Agreement with the Federal Republic of Germany, for example, provides that the German Government must accord designated American personnel "authority and facilities to carry out continuous observation and review of operations under the program of assistance provided under this agreement, including the utilization of military assistance furnished by the Government of the United States of America." (TIAS 3443, June 30, 1955.)

seems likely that the United States intended to confer authority on the Philippine Army to requisition supplies on its behalf and thereby create a direct liability on the United States Treasury beyond the appropriation and beyond the funds advanced to the Philippine Government.

It follows that, under the appropriation acts and the Executive Order, a regular purchasing officer of the Philippine Army, buying supplies requested by his commanding officer, did not have the authority to bind the United States. He could at most create an obligation on the Philippine Treasury; if the expenditure were made on the approval or authority of the Commanding General, USAFFE, it could be charged against funds in the Philippine Treasury advanced by the United States.

Petitioner contends that the guerrillas had authority to make contractual obligations, binding on the United States, by virtue of the fact that they were in the Philippine Army. But that status conferred no such authority. On the contrary, the very fact that the guerrillas were in the Philippine Army established that at the most they would have had authority to create an obligation on the Philippine Government.

It may be contended that military necessity gave the guerrillas authority which they did not otherwise have. It is true that there is sometimes implied authority in a subordinate officer to deal with emergency conditions and in doing so to obligate his principal. See *Mitchell* v. *Harmony*, 13 How. 115, 133; *United States* v. *Caltex (Philippines), Inc.*, 344 U. S. 149,

153. The necessity of the agent, however, cannot change the identity of his principal nor establish a principal-agent relationship which does not otherwise exist. No matter how seriously in distress a French soldier might be, he could not contract on behalf of the United States. Further, the petition here makes no allegations of emergency conditions such as to bring the claim within the rule of *Mitchell* v. *Harmony*.

2. The financial liabilities that were created by guerrilla procurement, and the moral obligation of the United States to help the Philippine Government meet those liabilities, were recognized by both armies and by both governments following the liberation of the Philippines. That the regulations governing the disbursement of funds applied to emergency requisitions and guerrilla claims as well as to routine procurement was understood by both governments, as evidenced by their conduct.

Following the liberation of the Islands, and the decision by President Osmena that recognized guerrilla units were part of the Philippine Army, there were hundreds of thousands of claims for back pay and allowances. The strength of the Philippine Army prior to the Japanese occupation was at most 120,000. Morton, p. 27. After the liberation, ten times that number claimed to have been "actively serving in recognized military forces." Approximately 1,200,000 claims were filed for guerrilla recognition. (App. B, *infra*, p. 73.) The United States Army Claims Service requested instructions as to what action, if any, they should take with respect to the

various types of guerrilla claims. (Pet. Br. App. 71b–76b.) General MacArthur concluded that, in view of the recognition by President Osmena that guerrilla units could be considered part of the Philippine Army, he should approve as an appropriate expenditure, against the funds advanced to the Philippine Government for that Army, certain categories of claims arising out of guerrilla conduct. (Pet. Br. App. 77b.) The authority to approve such claims was delegated to the Claims Service, which began the enormous task of processing these claims. Some 267,000 persons were found to have been bona fide, full-time guerrillas, making them eligible for back pay and allowances as members of the Philippine Army. (App. B, *infra*, p. 74.) Some 470,000 separate claims were filed for services and supplies provided to the guerrillas. (App. B, *infra*, p. 74.) The method of handling these claims was summarized by the Court of Claims in *Victorio* v. *United States*, 91 F. Supp. 748, 752:

> Claims for reimbursement for supplies furnished to recognized guerrilla units were processed in the following manner: The United States Army investigators checked and verified the claims. Those found to meet the requirements set out in circular orders by General MacArthur were approved by the Claims Service which forwarded the approved claim and supporting voucher to the Chief of Staff, Philippine Army, attention of the Finance Officer, for payment from funds delivered to the Philippine Government by virtue of the various appropriation acts, Army of the Philip-

pines, above set out. The American Government never paid the claimants directly but the Philippine Government presumably paid the individual claimant but did not account to the United States Government as it was not required to do so.

Of a total of over $337,000,000 used from appropriations for the Philippine Army, more than $285,000,000 was transferred to the Philippine Government for the Philippine Army by the United States after March 1945 when guerrilla units were first recognized, and was thus made available for meeting the various types of guerrilla claims.[18]

The entire conduct of both armies and both governments confirms the fact that under the arrangements made by the United States there was no authority in any member of the Philippine Army, express or implied, to create a direct obligation against the United States Government.[19] Rather, the United States assumed and met a moral obligation to support the Philippine Army by advancing sums to the Philippine Government and then approving, individually or by classes, expenditures from those funds.

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[18] A letter from the Assistant Judge Advocate General to the Attorney General dated September 7, 1956 gives the total amount of the appropriation, which did not lapse, as $337,351,889.28. Of this amount $285,434,000.00 was transferred to the Philippine Government between March 27, 1945 and July 6, 1948. Apparently the first recognition of individual guerrilla units was on March 26, 1945. (Pet. Br. App. p. 61b.)

[19] Petitioner has suggested that the guerrillas here involved received authority by virtue of the Military Requisition Act of 1941 (55 Stat. 742) (Pet. Br. 37–43), under the Hague Conventions and principles of international law (Pet. Br. 34–35, App. pp.

IV. IN THIS MATTER ARISING FROM MILITARY DECISIONS AND AFFECTING THE FOREIGN AFFAIRS OF THE UNITED STATES, THE COURT SHOULD BE SLOW TO DEPART FROM THE POSITION TAKEN BY THE EXECUTIVE BRANCH

Petitioner has suggested that the decision followed in this case has resulted in resentment toward the United States (Pet. 10), and he quotes at length the views of the representative of a foreign government, both as to the merits of the case and as to its possible international importance. (Pet. 11–13, 18a–21a.) It is submitted that considerations relating to the international ramifications of the case dictate that the Court should be slow to depart from the view which the Executive Branch has taken.

81b–83b), and under the Rules of Land Warfare (Pet. Br. 35–36). None of these appears to merit extended discussion. The Military Requisition Act of 1941 authorized the President under certain circumstances to requisition personal property. The regulations issued by the President under that statute required advance approval and other procedural steps which would preclude its being applicable to guerrilla procurement. See 8 Fed. Reg. 12068. The Hague Conventions and the principles of international law referred to by petitioner have no bearing on the case since they deal with rights as between governments. No one disputes the fact that the United States had the right to take property in the Philippines for a public purpose. This right was expressly reserved in the Independence Act and in the ordinance to the Philippine Constitution. App. C, *infra*, pp. 85–86. The question is whether the various transactions in the Philippines among Filipinos were authorized takings by the United States Government. International authorities and conventions do not deal with the subject of delegating authority from the United States to particular individuals. The Rules of Land Warfare, referred to by petitioner, is an Army Field Manual which explains the Hague Conventions and the rules of international law. It is not an operative command or order. It does not delegate authority from the government to any one.

For reasons well grounded in the distribution of functions in our Government (*United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319–321), this Court has always insisted that American courts "should not so act as to embarrass the executive arm in its conduct of foreign affairs." *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 35; *United States* v. *Lee*, 106 U. S. 196, 209; *Ex parte Peru*, 318 U. S. 578, 588. The government recognized by the President as representative of a foreign sovereign state will be accepted without question (*Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *United States* v. *Belmont*, 301 U. S. 324, 330; *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 137–138), as will the "underlying policy" which governs the question of recognition by the United States (*United States* v. *Pink*, 315 U. S. 203, 229). Decision as to the nation which is sovereign over a particular piece of territory is also left to the executive. *Jones* v. *United States*, 137 U. S. 202, 212; *Foster* v. *Neilson*, 2 Pet. 253, 307–309; *Pearcy* v. *Stranahan*, 205 U. S. 257, 265. A certification by the State Department that a foreign vessel, sued in our courts, is state-owned and immune from seizure automatically leads to a dismissal of the action, whatever view of the vessel's immunity the Court would have itself taken. *Ex parte Peru*, 318 U. S. at 588–590; *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 34–36. Even treaties from which private rights flow will normally not be interpreted contrary to a definite position taken by the executive vis à vis a foreign country, especially where judicial intervention might well cause difficulties in the larger sphere of foreign rela-

tions. *Foster* v. *Neilson*, 2 Pet. 253, 307–309; *Williams* v. *Suffolk Ins. Co.*, 13 Pet. 415; *United States* v. *Reynes*, 9 How. 127, 153–155; *Charlton* v. *Kelly*, 229 U. S. 447, 468, 474–476; *Sullivan* v. *Kidd*, 254 U. S. 433, 442; *Factor* v. *Laubenheimer*, 290 U. S. 276, 295; cf. Jaffe, *Judicial Aspect of Foreign Relations* (1933), 71–78.

This general attitude should apply to this case. Prior to full independence, the Philippine Government was in certain ways treated as a foreign government. For example, in 1937 the State Department determined that:

> Philippine Government officials are considered to be foreign government officials for visa purposes in view of [the] language of [the] Philippine Independence Act. [Hackworth, *Digest of International Law* (1940), vol. I, p. 502.]

The decision of the United States to preserve the national integrity of the Philippine Army during the war was a political decision, motivated no doubt by the desire both to improve the fighting morale of those troops and to demonstrate to other peoples that the United States was keeping faith in its promise of independence.

The decision to channel our assistance to the Philippine Army through the Philippine Government, and not directly to individual Filipinos, was again a decision relating to the conduct of our foreign affairs. Full independence for the Philippines had long been a policy of the United States, a policy of importance not only to our two countries but to countries all over the

world that were watching this experiment in self-government. The success of the experiment was essential. In the few short years before complete independence, the United States sought to help the Commonwealth Government acquire the experience that only responsibility can give. It was not by accident that under the financial arrangements between the two governments the Commonwealth Government continued during the war to have primary responsibility for procurement by the Philippine Army.[19a] During this same period the autonomy of the Philippine Government was recognized in other ways such as its participation as a signatory in the Declaration by United Nations of January 1, 1942 (the Philippine Government signed it on June 14, 1942) and in the United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire of July 1 to 22, 1944. See *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652, 676.

The Philippine Islands became fully independent on July 4, 1946. In the conduct of its relations with the Republic of the Philippines the United States continued as before to have the Army of the United States screen military and guerrilla claims against the Philippine Army and approve payment of those that had merit from funds advanced to the Philippine Government.

[19a] "When we call the Philippine Army into the service of the armed forces of the United States, we do not want to disrupt their organization. We want to continue it. We want their finance officers, their quartermasters, and every Philippine agency involved to carry out the same functions that they carry out now. Otherwise, the training would be detrimental rather than helpful." Testimony before Congress, October 6, 1941, App. E, *infra*, p. 88 *et seq.*

Two years after Philippine independence, the United States advanced to the Philippine Government an additional 93,778,000 pesos ($46,889,000) with which to meet guerrilla claims and other expenses of the Philippine Army. Of this amount, 42,000,000 pesos, together with amounts previously advanced, was considered adequate to cover claims already approved and the balance was to be available to pay additional amounts which might be due on reconsideration or review. (Treaties and other International Acts Series 2151, p. 3, App. D, *infra,* p. 92) There was a further agreement on July 11, 1949, extending the period in which these funds should be available. (App. D, *infra,* p. 96.)

The United States advanced these funds to the wholly independent government of the Philippines in the conduct of its military and foreign affairs and in further fulfillment of a moral obligation to help that government finance the legitimate claims arising from the operations of the Philippine Army during the war. It would appear that in advancing these funds there was at least an implicit determination by the Executive Branch that individual claims for guerrilla procurement should be addressed to the Philippine Government rather than the United States.

In 1950 the Philippine Government was in financial straits and asked the United States if, rather than returning the undisbursed balance of the funds advanced to it for the Philippine Army, it could borrow those funds for the general purposes of the government. See *USAFFE Veterans Association, Inc.* v. *Treasurer of the Philippines,* Civil No. 24277, Court

of First Instance of Manila, Branch VII, January 5, 1956.[20] The United States agreed that the repayment of the funds which had not been required to meet approved claims could be returned in installments over a period of ten years. Snyder-Romulo Agreement of November 6, 1950, App. D, *infra*, p. 89.

Payments are not now being made as provided in the Snyder-Romulo Agreement. The Philippine Government has raised with the United States on the diplomatic level a series of additional claims relating to the activities of the Philippine Army during the war and the obligation of the United States toward it. These claims fall into over a dozen categories. Among them are claims regarding quarters allowances, guerrilla currency, and the pay scale for all enlisted men in the Philippine Army. These claims which the State Department has received are currently under consideration.

These considerations are called to the Court's attention to suggest that particular weight should be given to the administrative construction that the United States did not authorize members of the Philippine Army to contract directly on behalf of the United States, and to indicate the extent of the political and diplomatic area on which this case directly touches.

There are also other reasons for suggesting that any ambiguity in the arrangements between the United States and the Philippine Army should be resolved against implying authority in irregular soldiers of

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[20] This was an unsuccessful suit by a veterans organization to enjoin the Philippine Government from returning the undisbursed balance of funds advanced by the United States.

the Philippine Army to create direct obligations upon the United States. Whether the soldiers of a separate military force have authority to obligate the United States should depend upon whether the United States intended to grant and did grant that authority, not, for example, on whether an order stated that a particular foreign unit was to fight "with" the United States armed forces or "as a part of" those forces. During World War II, in the Korean conflict, and under the North Altantic Treaty foreign units have been placed under the command of American officers. American troops have similarly been placed under the command of officers of other governments. Which government is in the first instance responsible for requisitioning by those units and what aid will be provided by other governments should be worked out by those creating the arrangements. Where such a pattern has been worked out and administratively followed for ten years by both governments, a court should, we submit, be cautious in imposing a different liability.

Petitioner's claim against the Philippine Army received full administrative consideration and was found to be without merit (R. 3, 11, 12). If petitioner has a claim it is against the Philippine Government. If he wishes to press that claim, he may do so. If the Philippine Government wishes to honor that claim it, too, may do so. The United States has already given generously both in time and money toward assisting the Philippine Government meet all those claims relating to the expenses of the Philippine Army that appeared to have merit. As with other

foreign military and economic assistance, this has been handled at the intergovernmental level. Any decision to do more should be made at the same level and should take into account related claims now being considered between the two governments.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be sustained.

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Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
ROGER D. FISHER,
Assistant to the Solicitor General.
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Attorneys.

OCTOBER 1956.

APPENDIX A

Relevant Federal Statutes

Sections 1a and 1b of Title 10 U. S. C., (64 Stat. 263, 268, as amended, 66 Stat. 508) provide in part:

> 1a. *Definitions.* The terms "Army of the United States" and "Army" are synonymous and mean the Army or Armies referred to in the Constitution of the United States, less that part established by law as the Air Force. The Army includes the components and persons prescribed in section 1b of this title.
>
> 1b. *Organization of the Army.* The Army includes the Regular Army, the National Guard of the United States, and the Army Reserve; all persons appointed, enlisted, or inducted in the above-named components; all persons appointed or enlisted as Reserves of the Army, including persons transferred to such status under any provision of law; all persons appointed, enlisted, or inducted in the Army without specification of component; and all persons serving in the Army under call or conscription under any provision of law, including members of the National Guard of the several States, Territories, and the District of Columbia when in the service of the United States pursuant to call as provided by law.

Sections 4b, 4c, 81a and 81b of 32 U. S. C. (48 Stat. 157, 47 Stat. 158, 35 Stat. 400, as amended) provide:

> § 4b. *National Guard and National Guard of the United States Defined.*
>
> In this title, unless the context or subject matter otherwise requires—

(a) "National Guard" or "National Guard of the several States, Territories, and the District of Columbia" means that portion of the Organized Militia of the several States, Territories, and the District of Columbia, active and inactive, federally recognized as provided in this Act and organized, armed, and equipped in whole or in part at Federal expense and officered and trained under paragraph 16, section 8, article I of the Constitution.

* * * * *

§ 4c. *Territory Defined.*

The word Territory as used in this title and in all laws relating to the land militia and National Guard shall include and apply to Hawaii, Alaska, Puerto Rico, and the Canal Zone, and the militia of the Canal Zone shall be organized under such rules and regulations, not in conflict with the provisions of this title, as the President may prescribe.

* * * * *

§ 81a. *Authority to Call Forth Militia.*

Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable, with the regular forces at his command to execute the laws of the Union, it shall be lawful for the President to call forth such number of the militia of the State or of the States or Territories or of the District of Columbia as he may deem necessary to repel such invasion, suppress such rebellion, or to enable him to execute such laws, and to issue his orders for that purpose through the governor of the respective State or Territory, or through the commanding general of the Militia of the District of Columbia, from which State, Territory, or District such troops may be called,

to such officers of the militia as he may think proper.

§ 81b. *Calling Forth Militia; Period of Service; Apportionment.*

Whenever the President calls forth the organized militia (including the National Guard) of any State, Territory, or the District of Columbia, to be employed in the service of the United States, he may specify in his call the period for which such service is required, and the militia so called shall continue to serve during the term so specified, either within or without the territory of the United States, unless sooner relieved by the President: *Provided,* That no commissioned officer or enlisted man shall be held to service beyond the term of his existing commission or enlistment, except as provided in section 81 of this title. When the militia of more than one State is called into the actual service of the United States by the President he may, in his discretion, apportion them among such States or Territories or to the District of Columbia according to representative population.

* * * * *

Section 84 of 32 U. S. C. (1940 Ed.) provided:

§ 84. *Drafting Philippine Militia Into Federal Service.*

The militia and other locally created armed forces in the Philippine Islands may be called into the service of the United States, and all members thereof thereof may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: *Provided,* That the pay and allowances of officers and men of the Philip-

pine Militia and other locally created armed forces in the Philippine Islands called into the service of the United States under the provisions of this section when serving in the Philippine Islands shall in no case exceed the pay and allowances for corresponding grades of Philippine Scouts. (Jan. 26, 1918, ch. 11, 40 Stat. 432.)

APPENDIX B

EXECUTIVE ORDERS, REGULATIONS, REPORTS AND RELATED MATERIALS

Executive Order No. 9011 (7 F. R. 145) provides:

PRESCRIBING REGULATIONS GOVERNING THE MANNER OF EXPENDING AND ACCOUNTING FOR FUNDS APPROPRIATED FOR THE ARMY OF THE PHILIPPINES

By virtue of and pursuant to the authority vested in me by the act of December 17, 1941, Public Law 353, 77th Congress, I hereby prescribe the following regulations governing the manner of expending and accounting for funds appropriated for the Army of the Philippines:

DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE UNITED STATES

1. (a) Necessary expenditures, except as provided for in Paragraph 1 (b), for the purposes authorized by the act of December 17, 1941, may be made by disbursing officers of the Army of the United States notwithstanding any restrictive provision of law, but will be accounted for in accordance with present procedures governing the accounting for Government funds.

(b) Advances or reimbursements made to the Government of the Commonwealth of the Philippines by disbursing officers of the Army of the United States, as authorized by the Commanding General, United States Army Forces in the Far East, for necessary expenses authorized by the act of December 17, 1941, will be accounted for on vouchers evidencing the amounts advanced to or paid as reimbursement to the Government of the Commonwealth of the

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Philippines, but such vouchers need not be supported by vouchers paid by disbursing officers of the Army of the Philippines.

DISBURSEMENTS MADE BY DISBURSING OFFICERS OF THE ARMY OF THE PHILIPPINES

2. (a) Necessary expenditures from funds in the Philippine Treasury for the purposes authorized by the act of December 17, 1941, will be made by disbursing officers of the Army of the Philippines on the approval or authority of the Commanding General, United States Army Forces in the Far East, and for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Philippine Government, and such expenditures will be accounted for in accordance with procedures established by Philippine Commonwealth laws and regulations.

(b) Accounts of disbursing officers of the Army of the Philippines after audit by the Auditor, Army of the Philippines and administrative examination by the Agency designated by the Commanding General, United States Army Forces in the Far East, to determine reimbursement due the Government of the Commonwealth of the Philippines, will be submitted to the Auditor General of the Philippine Commonwealth Government for preservation and safe keeping in accordance with provisions of Philippine law.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 3, 1942.*

Section 21 of the War Department Quartermaster Field Manual (FM 10–5) provides:

IN THEATER OF OPERATIONS.—Supplies are obtained in the theater of operations from two sources: by exploitation of the resources of the theater of operations, and by forwarding from

the zone of the interior. It is fundamental that all supplies and facilities available in the theater of operations should be utilized to the utmost. This is especially true of subsistence and forage. The fullest utilization of local supplies becomes increasingly important when the theater of operations lies in a country deficient in railroads and waterways. When the theater of operations is in hostile territory, supplies are obtained by purchase or requisition. Requisitions are either direct (foraging) or by systematic collection into depots. Requisitions are resorted to only when authorized in orders of the commander of the theater of operations and are enforced by detachments commanded by commissioned officers. Property obtained by requisition is either paid for or restored with suitable indemnity. However, better results are usually obtained when cash payment is made for the supplies taken. If the supplies are not paid for upon delivery, receipts are given; these receipts are redeemed at the earliest possible date. Under certain conditions, with a view to taking full advantage of available resources in the theater of operations, it may be advisable to create a purchasing agency to supervise the purchase or requisition of supplies. This agency should furnish information as to the character of supplies which can be advantageously obtained in the theater of operations and other pertinent information as may be necessary to permit intelligent determination as to the expediency of purchase or requisition. A well-organized system of purchase and requisition is of great value, but exclusive reliance cannot be placed on local procurement even in the most productive countries. Recourse must invariably be had to shipments from the zone of the interior.

The order of the Commanding General (USAFP) recognizing, *inter alia*, the 7th Military District of

Negros (the guerrilla organization here involved) states:

GENERAL HEADQUARTERS
UNITED STATES ARMY FORCES, PACIFIC

CM/jb
APO 500
AG 370.64 (23 Aug 45) PA 23 August 1945

Subject: Recognition of Guerilla Units.
To: Commanding General, United States Army Forces, Western Pacific, APO 707
Chief of Staff, Philippine Army, APO 501

1. Guerrilla forces as indicated below were recognized by the Commander-in-Chief, SWPA, on dates shown:

Commander	Area	Date
Col Wendell W. Fertig	10th Mil Dist	13 Feb 1943
Col Macario Peralta	6th Mil Dist	13 Feb 1943
Col Ruperto K. Kangleon	Leyte Command	21 Oct 1943
Col Alejandro Suarez	Sulu Command	11 Feb 1944
Lt Col Salvador Abcede	7th Mil Dist	8 Jul 1943
Lt Col James Cushing	Cebu Command	12 Feb 1944
Lt Col Charles W. Smith	Samar Command	4 Oct 1944
Maj Ismael P. Ingeniero	Bohol Command	21 Oct 1943
Maj Jose M. Ruffy	Mindoro	15 Dec 1944
Maj Pablo Muyco	Palawan	28 Feb 1945
Capt Manuel Donato	Masbate	3 Apr 1945
Capt Sofronio Untalan	Marinduque	15 Dec 1944

2. Under the provisions of Executive Order No. 21, by the President of the Commonwealth of the Philippines, dated 26 October 1944, the status of units under commanders listed above is that of members of the Philippine Army.

By command of General MACARTHUR:

D. W. DOOLEY,
Capt, AGD,
Asst, AG.

A true copy:

(S) Lester W. Pierce, Jr.,
LESTER W. PIERCE, Jr.,
1st Lt., CAC,
Chief, Records Section.

The following letter was addressed to the Chairman of the House Judiciary Committee by the Secretary of the Army in response to a request for comment on proposed legislation, the original of which is in the files of the Committee:

MAY 12, 1954.

Honorable CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter inclosing a copy of H. R. 6541, 83d Congress, a bill "To extend the time for filing claims on behalf of certain claimants, and for other purposes," and requesting a report on the merits of the bill.

This bill provides as follows:

"That, notwithstanding any statute of limitations or lapse of time, suits may be instituted within one year after the enactment of this Act in the United States Court of Claims in accordance with the provisions of section 1491, title 28, United States Code, by all persons who claim compensation for property, goods, and services, and reimbursement for moneys, credit, and securities advanced to military forces serving on the side of the United States in the Philippine Islands during the period from December 7, 1941, to September 2, 1945: *Provided,* That any such claim shall be barred forever unless suit thereon is instituted within one year from the date of the enactment of this Act: *Provided further,* That nothing in this Act shall be construed to create any liability against the United States not existing prior to the enactment of this Act."

Section 1491, title 28, United States Code, provides, in pertinent part, as follows:

"The United States Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

"(1) Founded upon the Constitution; or

"(2) Founded upon any Act of Congress; or

"(3) Founded upon any regulation of an executive department; or

"(4) Founded upon any express or implied contract with the United States; or

"(5) For liquidated or unliquidated damages in cases not sounding in tort.

* * * * *

Subsection (a), section 2401, title 28, United States Code, provides as follows:

"(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases."

The purpose of the subject bill is to waive the above-quoted statute of limitations in favor of a certain group of persons who assert claims against the United States, allegedly arising in the Philippine Islands during the period from December 7, 1941, to September 2, 1945.

Inasmuch as the courts of the United States were deemed to have been inaccessible to inhabitants of the Philippine Islands from the date of the Japanese attack (December 8, 1941, Manila time), until the date of formal surrender by the Japanese (September 2, 1945, Manila time), it was held that the operation of the statute of limitations was suspended during such time with resepect to these inhabitants. Therefore, it was held that any such inhabitant could present to the Court of Claims a claim against the United States arising during the period of inaccessibility at any time within six years after September 2, 1945, and that any such claim presented after September 2, 1951, would be untimely and barred by said statute of limitations. *Marcos* v. *United States,* 102 F. Supp. 547 (Ct. Cl. 1952), rehearing denied

106 F. Supp. 172 (Ct. Cl. 1952); *Tan* v. *United States,* 102 F. Supp. 552 (Ct. Cl. 1952), certiorari denied 344 U. S. 895. It should be noted that the Court allowed claims to be filed within the full six-year period following September 2, 1945, instead of the usual three-year period provided in section 2401 (a) for persons beyond the seas or under legal disabilities at the time their claims accrued.

In order to gain a full appreciation of the difficulties which would be presented by the enactment of the subject bill, it seems desirable at this point to briefly examine the history of claims falling within the purview of the bill.

The Act of March 24, 1934 (48 Stat. 456), authorized the creation of the Commonwealth of the Philippine Islands and the formulation of a constitution for its government, subject to certain restrictions and limitations. Subsection 2 (a) thereof provided, in part, as follows:

"The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

"* * * * * *

"(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government." (48 Stat. 456, 457.)

The Constitution of the Commonwealth of the Philippines was adopted on February 8, 1935, and the foregoing provision was incorporated into the Ordinance appended to the Constitution. The Philippine Army was cre-

ated by Philippine Commonwealth Act Number 1, approved December 21, 1935, commonly known as "The National Defense Act," which, together with later Commonwealth acts, provided appropriations from the Treasury of the Commonwealth of the Philippines for the support of the Philippine Army.

With threat of war imminent, there was created, on July 26, 1941, a new command in the Far East, known as the United States Army Forces in the Far East (USAFFE), and Lieutenant General Douglas MacArthur was appointed the Supreme Commander. On the same date, the President of the United States, as Commander-in-Chief of the Army and Navy of the United States, and in pursuance of the foregoing authority, issued a Military Order (6 Fed. Reg. 3825), which read, in pertinent part, as follows:

"* * * I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Government of the Commonwealth of the Philippines: *Provided,* that all naval components thereof shall be placed under the command of the Commandant of the Sixteenth Naval District, United States Navy.

"This order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War."

General MacArthur immediately initiated a program of mobilization, and on August 5, 1941, he began to order various units of the Philip-

pine Army "into the service of the armed forces of the United States in the Philippines." However, when war broke out on December 8, 1941 (Manila time), mobilization was as yet incomplete. On December 18, 1941, all units of the Philippine Army not theretofore called were ordered to report for service immediately. The total peak strength of all Philippine Army Forces during this period has been estimated to be approximately 86,000.

On May 7, 1942, Lieutenant General Jonathan M. Wainwright tendered "to the senior Japanese officer on Corregidor, the formal surrender of all American and Filipino Army troops in the Philippines." Surrender of the Visayan-Mindanao Force of Major General W. F. Sharp, and the forces on Negros under Colonel Roger Hilsman, followed on May 11, 1942. It has been estimated that, upon the surrender, 55,000 members of the Philippine Army became prisoners of war. While the surrender instructions directed all American and Filipino Army troops to cease resistance, a considerable number of officers and enlisted men, both American and Filipino, refused to comply and retreated to the hills. Many others escaped after the surrender. These men were the nucleus of what was to become the resistance movement in the Philippine Islands.

Independent guerrilla groups, composed of both civilian and military personnel, began to form throughout the Islands. Initially, these groups were small and, due to the terrain and variable Japanese occupation conditions, remained largely independent until communications were improved and directives were received from General MacArthur's Headquarters in Australia. Under directives from General Headquarters, Southwest Pacific Area (SWPA), guerrilla groups in the Visayas and on Mindanao were slowly unified. Groups on Luzon could not be reached and they grew largely on

their own until late 1944, when the large body of guerrillas active there became known for the first time. Unification, when it was effected, was often accompanied by conflict and prejudice. Animosity between many groups grew, and they vied with each other for recognition, power, or glory. Many of the populace willingly contributed to the support of their local guerrilla groups. On the other hand, some groups preyed upon the people and took the supplies they needed, either by misrepresentation or by force. In fact, many self-styled "guerrilla" bands were nothing but roving bandits.

American liberation forces landed on Philippine soil at Leyte, on October 20, 1944, and the large-scale return of Philippine Army personnel to American Army control began a few days later. On October 28, 1944, the President of the Commonwealth of the Philippines issued Executive Order Number 21, in which he declared that—

"All persons, of any nationality of citizenship, who are actively serving in recognized military forces in the Philippines, are hereby considered to be on active service in the Philippine Army.

"* * * * * *

"A recognized military force, as used herein, is defined as a force under a commander who has been appointed, designated or recognized by the Commander-in-Chief Southwest Pacific Area."

As American liberation forces progressed through the Islands, guerrilla groups were attached for the purpose of engaging in combat activities. Upon proof of their usefulness, the Commanding General of the United States Army to which they were attached officially recognized each of these groups as a "military force" within the meaning of Executive Order

Number 21. Many guerrilla groups not attached to U. S. Army Forces during the liberation, but which met certain requirements of service in the resistance movement during the Japanese occupation, were later recognized as military forces by the Commander-in-Chief, SWPA, and the Commanding General, United States Army Forces Western Pacific (AFWESPAC). In recognition of the services rendered by these guerrilla units in the resistance movement, recognition dates were in many cases made retroactive, and in some cases as far back as 1942.

Countless claims for guerrilla recognition were received. Approximately one out of every eight persons on the island of Luzon, man, woman, and child, submitted a claim for guerrilla recognition, and out of approximately one million individuals claiming guerrilla status on Luzon, less than two hundred thousand were found to be bona fide, full-time guerrillas.

Almost immediately, claims were asserted against the United States for pay and allowances and for compensation for services and supplies. These claims may be roughly divided into three categories; namely, (1) those concerned with members of the United States Armed Forces (including the Philippine Scouts), (2) those dealing with members of the Philippine Army, and (3) those dealing with non-military guerrillas.

The Department of the Army does not question the liability of the United States with respect to claims falling within the first category, where such claims are substantiated.

It has been administratively determined that the United States is not legally responsible for the payment of claims falling within the second and third categories. This view was not accepted by the United States Court of Claims in the case of *Victorio* v. *United States* (Ct. Cl. 1952, 106 F. Supp. 182); however, this decision

is not final and is subject to review by the United States Supreme Court. The Department of the Army remains of the view that there exists no *legal* obligation on the part of the United States. However, inasmuch as this is a question for future determination by the courts, no extended discussion of this point will be here made.

With the mounting tension in the Far East early in 1941, it became apparent that the organization and mobilization of the Army of the Philippines was necessary to the defense of the Islands, but that the Government of the Commonwealth of the Philippines was incapable of providing the means therefor without financial aid from the United States. In November of 1941, the then Chief of Staff, United States Army, General George C. Marshall, testifying in connection with a request for appropriations, stated:

"* * * This Army, being an Army of the Philippine Commonwealth Government, cannot under existing law be financed from military appropriated funds, even though called into service with the Armed Forces of the United States. Because of this fact and the fact that the Congress had not appropriated funds for the purpose, $10,000,000 was borrowed from the emergency fund of the President in order to initiate the mobilization and to provide the necessary maintenance for this force. * * *" (Hearings before the Subcommittee of the House Committee on Appropriations on the Third Supplemental National Defense Appropriation Bill for 1942, 77th Cong., 1st Sess., p. 47 (1941).)

The Congress of the United States, during the period from December 17, 1941, through July 3, 1945, appropriated the total sum of $297,313,300.00 for—

"* * * all expenses necessary for the mobilization, operation, and maintenance of the

Army of the Philippines, including expenses connected with calling into the service of the armed forces of the United States the organized military forces of the Government of the Commonwealth of the Philippines, and expenditures incident to pay, allowances, operation, maintenance, and other activities of units and personnel of said organized military forces * * * [such sum] shall be available for payment to the Government of the Commonwealth of the Philippines upon its written request, either in advance of or in reimbursement for all or any part of the estimated or actual cost, as authorized by the Commanding General, United States Army Forces in the Far East, of necessary expenses for the purposes aforesaid * * *." (Act of July 3, 1945, 59 Stat. 401; See also: Act of December 17, 1941, 55 Stat. 813; Act of July 2, 1942, 56 Stat. 628; Act of July 1, 1943, 57 Stat. 365; and Act of June 28, 1944, 58 Stat. 591.)

The Act of February 18, 1946 (60 Stat. 14), transferred to this appropriation ("Army of the Philippines") an additional sum of $200,000,000.00 with the following provisos:

"*Provided,* That service in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the armed forces of the United States pursuant to the military order of the President of the United States dated July 26, 1941, shall not be deemed to be or to have been service in the military or naval forces of the United States or any component thereof for the purposes of any law of the United States conferring rights, privileges, or benefits upon any person by reason of the service of such person or the service of any other person in the military or naval forces of the United States or any component thereof, except benefits under (1) the National Service Life Insurance Act of 1940, as amended, under contracts heretofore

entered into, and (2) laws administered by the Veterans' Administration providing for the payment of pensions on account of service-connected disability or death: *Provided further,* That such pensions shall be paid at the rate of one Philippine peso for each dollar authorized to be paid under the laws providing for such pensions: *Provided further,* That any payments heretofore made under any such law to or with respect to any member of the military forces of the Government of the Commonwealth of the Philippines who served in the service of the armed forces of the United States shall not be deemed to be invalid by reason of the circumstances that his service was not service in the military or naval forces of the United States or any component thereof within the meaning of such law."

Upon the liberation of the Islands, it was realized that the Government of the Commonwealth of the Philippines could not meet whatever obligations were imposed upon it by virtue of the issuance of Executive Order No. 21 by the President of the Commonwealth, *supra.* Consequently, and in furtherance of the expressed desire on the part of the United States to help bolster the devastated economy of the Islands, General MacArthur, pursuant to the discretion vested in him by the provisions of the Appropriation, Army of the Philippines, considered it advisable and proper that those inhabitants of the Islands who made substantial contributions to the fight against the Japanese should be compensated therefor from this appropriation as expeditiously as possible. Accordingly, facilities were established early in 1945 for the processing of claims asserted by guerillas for pay and allowances and by others for supplies and services furnished to the guerrillas. The claims were processed and investigated in the Islands by the U. S. Army, and where found meritorious, they were certified to

the Philippine Army for payment. Such payments were made out of funds advanced to the Commonwealth of the Philippines (and later the Republic of the Philippines) for that purpose in accordance with the provisions of the appropriation act. During the fiscal years 1945 through 1949, the sum of approximately $285,000,000.00 was advanced to the Philippine Government, and the major portion of this sum was presumably expended by the Philippine Government in payment of claims certified to it.

In April, 1945, a claims office was established in the Manila area by the U. S. Army, and shortly thereafter, branch offices were established throughout the Islands. In August of 1947 notice was given that all branch offices would be closed on October 31, 1947, and that all further claims activities would be conducted at the Manila office. In view of the fact that the Appropriation, Army of the Philippines, would lapse and no longer be available for the payment of claims after June 30, 1948, a deadline of March 31, 1948, was established for the receipt of procurement claims (earlier deadlines had been established for other types of claims). This deadline was well publicized. Just prior to the lapse of the appropriation, however, an agreement was reached whereby the sum of approximately $47,000,000.00 was advanced to the Philippine Government for the payment of outstanding claims and claims that were to be reconsidered during the fiscal year 1949. Inasmuch as these additional funds were available for the payment of claims, it was decided that, on October 13, 1948, the acceptance of claims be resumed until July 1, 1949.

It is estimated that more than 1,200,000 claims for guerrilla recognition and the resultant pay and allowances, involving many hundreds of millions of dollars, were presented and processed. Of this number, approximately

267,000 were found to be bona fide, full-time guerrillas.

It is estimated that a total of more than 470,000 claims for services and supplies, involving more than $600,000,000.00 were presented and processed. Approximately 280,000 of these, in the total amount of approximately $176,000,000.00, were filed in the three-year period from 1945 through February, 1948. Approximately 150,000 claims, involving more than $260,000,000.00, were filed in the month of March, 1948, alone (March 31, 1948, was the deadline for receipt of claims). Approximately 40,000 more claims, in the total amount of approximately $172,000,000.00, were filed in the period from October 13, 1948, through June 30, 1949. Thousands of claims were given individual reconsideration at the request of dissatisfied claimants, and during the last months of the fiscal year 1949, approximately 375,000 claims were individually reviewed for errors, and where errors were found, they were corrected.

The tendency of claimants to submit grossly exaggerated claims, which became readily apparent during the frenzied filing of claims to meet the deadline of March 31, 1948, was shown to have been greatly intensified in the filing of new claims after October, 1948. There is evidence of the operation of claims racketeers in the Islands. The extent of their activities can only be guessed, but it can be stated that the most difficult problem confronting claims personnel of the United States was the detection of false and exaggerated claims. The number and amount of claims that were submitted without any foundation in fact were fantastic, and it required highly trained and experienced personnel to prevent such claims from being paid. Forged documents were commonplace, and in many cases unscrupulous ex-guerrillas executed false receipts and other

documents. It was only through the maintenance of extensive cross-indices, and the experience of claims personnel, that it was possible to detect a major portion of false claims. There was not at that time, and there is not today, any suitable provision in the law of the Philippines for the prosecution of individuals who knowingly submit, or assist in the submission, of these false claims.

It would seem that inhabitants of the Philippine Islands have been allowed an ample period of time within which to present their claims. They could have filed their claims for administrative consideration from April, 1945, to July 1, 1949, a period of over four years. As hereinbefore pointed out, any claimant who did not file such a claim, or who was dissatisfied with the administrative decision in his case, had the opportunity to present his claim to the United States Court of Claims any time before September 2, 1951. It is well to note at this point that the Court of Claims will accept a claim presented by mail.

It has been contended that inhabitants of the Islands have not been made aware of their legal rights against the United States; that they were misled by the first decision in the case of *Victorio* v. *United States* (Ct. Cl. 1950, 91 F. Supp. 748), in which the Court of Claims held that the United States was not liable for guerrilla procurement claims; that it was not until after the statute of limitations had run that the Court held, on rehearing (Ct. Cl. 1952, 106 F. Supp. 182), that the United States was liable for procurements made by certain guerrilla and Philippine Army units; and that those claimants who were not fortunate enough to have attorneys, or to have attorneys who would file their claims despite the adverse ruling in the first *Victorio* decision, were deprived of

their right to file a claim with the Court by reason of the running of the statute of limitations.

In this connection, it is interesting to note that attorneys have been active in the Islands in this type of case for years; that the "Claims Committee, Liberated Military Personnel (Japan), Washington 4, D. C.," has been active in the Islands, and many claims were forwarded to it through the Luna Law Offices in Manila (for further information on this "Committee" and its other activities, see: Extension of Remarks of Honorable James E. Van Zandt (93 Cong. Rec. App. A1989); Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 873, H. R. 1823, H. R. 1000, and H. R. 2823, 80th Cong., 1st Sess., p. 365 (1947)); and that the Washington, D. C., attorneys for the Committee (well publicized in the Committee's brochures) were also the attorneys for the plaintiff in the second *Victorio* decision. It appears that the inhabitants of the Islands have been made well aware of their alleged rights against the United States by Filipino and American attorneys, and others.

The enactment of the subject bill will allow the filing with the Court of Claims of hundreds of thousands of disapproved claims, not to mention the alleged claims—of every type—of thousands of others who did not file claims with the Army. In view of the past history of extensive solicitation of claims in the Islands, it can be anticipated that the Court would be deluged with these claims.

The Department of the Army is strongly of the opinion that the enactment of this legislation would open a Pandora's box. These claims are, by their very nature, difficult of legal defense. Records have been retired and personnel are scattered. Many witnesses have

died or disappeared. Many areas in the Islands where events are alleged to have occurred are inaccessible to Army investigators because of the civil strife now in progress.

A statute of limitation is not merely a legal technicality, it is a rule designed to promote justice. It has been enacted for the purpose of putting an end to legal controversy, whether between private individuals or a private individual and the Government. The theory is that a time comes when records are not available and memories have faded, and it is no longer possible for the courts of law to reach substantial justice concerning the alleged facts in issue. If the subject bill is enacted, it will allow the re-opening of claims which are anywhere from 9 to 13 years old, and it is likely that at the time of actual trial some of these claims will be over 16 years old. As hereinbefore pointed out, the Court of Claims has allowed claims to to be filed within the six-year period following September 2, 1945, instead of the usual three-year period provided for persons beyond the seas or under legal disabilities. It is believed that a firm insistence upon the statute of limitations in this type of case will promote substantial justice, and that it will be in the best interests of the United States and its relations with the Republic of the Philippines.

The Department of the Army, in view of the foregoing, strongly recommends that the subject bill be not favorably considered by the Congress. The Department would appreciate the opportunity to have its representatives, well-experienced in the problems presented, appear before your Committee and enlarge upon the views herein contained.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

(Signed) Robert T. Stevens,
ROBERT T. STEVENS,
Secretary of the Army.

Statement of General George C. Marshall, United States Army Chief of Staff, on Hearings before the House Committee on Appropriations, on the Third Supplemental National Defense Appropriation Act of 1942, 77th Cong., November 17, 1941, (p. 47: Part II)

MOBILIZATION AND OPERATION OF THE PHILIPPINE ARMY

The sitation in the Far East attained such threatening proportions in the late summer that it was deemed essential to take steps to increase the defensive capabilities of the Philippine Department. In addition to certain steps, of which I shall speak off the record, it was decided to activate the Philippine Commonwealth Army. This Army, being an [redacted] Army of the Philippine Commonwealth Government, cannot under existing law be financed from military appropriated funds, even though called into service with the armed forces of the United States. Because of this fact and the fact that the Congress had not appropriated funds for the purpose, $10,000,000 was borrowed from the emergency fund of the President in order to initiate the mobilization and to provide the necessary maintenance for this force. Gen. Douglas MacArthur, former Chief of Staff of the Army, and recently military adviser to the Philippine Commonwealth Government, was recalled to active duty and appointed by the Commander in Chief to command all military forces in the Far East. The funds borrowed from the emergeny fund of the

President were made available to General MacArthur. He has informed the War Department that he has begun the mobilization and training of the Philippine Commonwealth Army. He further informs that the $10,000,000 made available to him will finance his requirements only through November.

The following extract is reprinted, without internal omissions, from the Sixth Annual Report of the United States High Commissioner to the Philippine Islands (H. Doc. 111, 78th Cong. 1st Sess. 1943) pp. 14–15:

II. MILITARY AND NAVAL ACTIVITIES AND CIVILIAN DEFENSE

MILITARY DEVELOPMENTS

As relations with Japan become increasingly tense, the tempo of military preparations in the Philippines was stepped up. Maj. Gen. George Grunert, in command of the Philippine Department, kept pressing Washington for additional personnel, ammunition, and equipment and pushing the work of preparing, strengthening, and reorganizing the defense of the islands. On July 26, 1941 (July 27, Manila date), President Roosevelt ordered the incorporation of the Philippine armed forces in the United States Army and appointed Gen. Douglas MacArthur as commander of the United States Army forces in the Far East. Shortly after General MacArthur received this appointment his headquarters issued the following statement:

"The general plan for the integration of all the armed forces in the Philippines has been formulated by General MacArthur. It envisions a progressive incorporation of the reserve divisions of the Philippine Army into the service of the United States. It comprehends eventually all elements of the Philippine Army, but until an actual outbreak of hostili-

ties will not include these echelons which are engaged in the normal yearly training activities. This will enable the Philippine Army to continue its uniform development in accordance with the national defense program of the Commonwealth and at the same time muster for prompt American Army training and service the other components of the Commonwealth's forces. The constabulary will not be taken over with the exception of certain selected elements.

"The plan envisions an immediate construction program at strategic localities to house the thousands of reservists involved as well as the intensive development of new air fields for the rapidly expanding air forces. All Philippine elements which come under American control will maintain their national integrity. They will retain their own uniforms, their own scale of pay, their own promotion list, their own ration, and their own code of military law. Their training, however, will be under the immediate direction of the officers of the American Army. On muster into the American service they will be paid and supplied from American sources. The class of trainees whose induction was suspended in July is expected to be called in January, from which time the normal course of Philippine Army training will continue, barring contingencies.

"The plan is a most comprehensive and complete one and will go into effect immediately. Its details involve military information which cannot be made public and the press has been requested not to reveal numbers, localities, and other data involving military secrecy. However, information on general progress will be reported together with all details which are not regarded as confidential.

"The program has been heartily endorsed by President Quezon and is expected to effectuate in a most comprehensive manner the purposes underlying President Roosevelt's proclamation."

The following memorandum, approved by General George C. Marshall, CS-USA, was the basis on which Secretary of War Stimson recommended that the President call the Philippine forces to the defense of the Islands on July 26, 1941:

WAR DEPARTMENT

WAR DEPARTMENT GENERAL STAFF

War Plans Division

WASHINGTON, *July 17, 1941.*

Memorandum for the Chief of Staff:

Subject: Emergency Mobilization and Training of the Philippine Army.

I. *Discussion.*

1. In April 1941, the Commanding General, Philippine Department, recommended that certain elements of the Philippine Army be called and ordered into the service of the armed forces of the United States. Funds were not available for the purpose, at that time. However, an Executive Order was drafted, and approved by the President, so that action could be taken promptly in an emergency. A revision of the original draft is deemed advisable so that command authority may be vested in a General Officer, designated by the Secretary of War, rather than restricted to the Commanding General, Philippine Department (Tab A).

2. Legislation, for submission to Congress, authorizing the appropriation of certain sugar excise tax and currency devaluation funds, for the purpose of improving the defenses of the Philippine Commonwealth, was dispatched to the Chief of Staff on July 12. The President has approved this procedure. Approximately $52,000,000 is involved, of which $31,000,000 is set up for the mobilization and training of the Philippine Army. Various items making up the total of funds to be expended for this purpose are listed in Tab B.

3. General Grunert, in commenting on his plans, states that the mobilization process and machinery will remain in the hands of the Philippine Army; that approximately 425 Reserve officers of the United States Army will be required to assist in mobilization and training activities.

4. In a personal letter to the Chief of Staff, dated July 7, 1941, General MacArthur concurs, in general, with the views of the Commanding General, Philippine Department. He states the importance of having the Philippine Army retain its complete identity and operation under its own laws and regulations. He feels that the War Department should make available to the Philippine Government the necessary number of qualified American officers as instructors.

5. Consideration has previously been given to placing General MacArthur in command of all Army Forces in the Far East. General MacArthur believes that the time is now opportune to create such a command, and that it will result in favorable psychological and morale reactions.

6. Until enactment of necessary enabling legislation and the appropriation of moneys from sugar excise and dollar devaluation funds, no specific funds are available to cover the cost of mobilization and training of the Philippine Army.

7. In view of the present situation in the Far East, and the inadequate forces available in the Philippine Islands for defense, War Plans Division believes that the Executive Order calling the Philippine Army into the service of the armed forces of the United States should be promulgated without delay. Funds to cover the cost of these measures, pending appropriation of sugar excise and dollar devaluation funds, should be secured from the President's Emergency Fund, subject to repayment.

8. The Commanding General, Philippine Department, points out that the pay and subsistence of the Philippine Army are less than rates of pay and emoluments of the Philippine Scouts. To conform to the recommendations of Generals Grunert and MacArthur, and to meet possible legal restrictions, any funds secured should be available to meet pertinent expenses of the Philippine Commonwealth.

II. *Action recommended.*

1. That the attached letter to the President, recommending that the Executive Order calling and ordering into the service of the armed forces of the United States, for the period of the emergency, all of the organized military forces of the Government of the Philippine Commonwealth, be promulgated, be signed and dispatched.

2. That the War Department Budget Officer be directed to request the Director of the Bureau of the Budget to make available from the President's Emergency Fund the sum of $10,000,000 for expenditure by the War Department and the Government of the Commonwealth of the Philippines, to cover the costs of mobilization and training of the Philippine Army for a period of approximately three months.

3. That training of the Philippine Army for an additional period of approximately six to nine months be financed from moneys appropriated from sugar excise and currency devaluation funds or from other funds appropriated for this specific purpose.

4. That the Assistant Chief of Staff, G–1, be directed to secure and order to the Philippine Department, for duty, approximately 425 Reserve officers of appropriate grades and branches, for the purpose of assisting in the mobilization and training of the Philippine Army.

5. That the Assistant Chief of Staff, G–1, be directed to take the necessary steps to have

General MacArthur called to active duty, in the grade of Major General. (See Tab C.)

6. That General MacArthur be assigned to duty as Commanding General, Army forces in the Far East, including the Philippine Department. (See Tab D.)

7. That, if approved, correspondence be returned to War Plans Division for further necessary action.

III. *Concurrences.*

A. C. of S., G–1 (MHH). Jul 18 1941.
A. C. of S., G–3 (HW). Jul 18 1941.

L. T. GEROW,
Brigadier General,
Acting Assistant Chief of Staff.

JUL 26 1941.

Approved:
By order of the Secretary of War:

G. C. MARSHALL,
Chief of Staff.

(S) R. N. Young,
By R. N. YOUNG,
Major GSC, Asst Sec. W. D. G. S.

APPENDIX C

PHILIPPINE COMMONWEALTH CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the Philippines:

* * * * *

ARTICLE II—DECLARATION OF PRINCIPLES

* * * * *

SEC. 2. The defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service.

* * * * *

ARTICLE VII—EXECUTIVE DEPARTMENT

* * * * *

SEC. 11. (2) The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

* * * * *

ORDINANCE APPENDED TO THE CONSTITUTION

* * * * *

SEC. 1. (12) The Philippines recognizes the right of the United States to expropriate prop-

erty for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

* * * * *

Philippine Commonwealth Act No. 1—an Act to provide for the National Defense of the Philippines, penalizing certain violations thereof, appropriating funds therefor, and for other purposes, provides in part:

* * * * *

TITLE II—MILITARY ORGANIZATION

ARTICLE I—COMPOSITION AND ORGANIZATION OF THE ARMY

* * * * *

SEC. 17. The Army of the Philippines shall consist of the Regular Force and the Reserve Force.

* * * * *

ARTICLE II—THE REGULAR FORCE

SEC. 19. The Regular Force shall consist of the Infantry, the Cavalry, the Field Artillery, the Coast Artillery Corps, the Air Corps, the Corps of Engineers, the Signal Corps, and the active elements of the Offshore Patrol; the General Staff Corps; the Services consisting of the Adjutant General's Service, the Judge Advocate Service, the Quartermaster Service, the Medical Service; the Ordnance Service, and the Chaplain Service, the professors and cadets of the Military Academy; of detached officers, of detached enlisted men, of unassigned recruits, of such other officers and enlisted men as may be provided for, and of the Constabulary. Officers and enlisted men permanently

assigned to the services shall be known as officers and enlisted men of the Staff; officers and enlisted men not permanently assigned to a service shall be known as officers and enlisted men of the line.

* * * * *

SEC. 22. The appointment, promotion, and discharge of officers in the Army shall be as follows:

(a) All commissioned officers in the Army shall be citizens of the Philippines * * *

(b) Officers shall be commissioned in the Army of the Philippines subject to such examinations for the determination of fitness and proficiency as the President may prescribe. All appointments and promotions shall be made by the President, but the appointments and promotions in the Army from the rank of colonel shall be made with the consent of the Commission on Appointments of the National Assembly.

(c) Except as hereinafter authorized, all appointments of regular officers shall be in the grade of third lieutenant, from among applicants who at the time of appointment shall be not less than twenty-one nor more than twenty-six years of age. Priority in filling vacancies in the grade of third lieutenant will be given: first, to graduates of the Military Academy of the Philippines or of the Military or Naval Academies of the United States; second, to graduates of senior military training units in schools and colleges; third, to enlisted men who at the time of appointment shall have served more than one year in the Army of the Philippines; and fourth, to others: * * *

* * * *And provided, also,* That during the five years following the approval of this Act, the President is authorized to fill vacancies in any commissioned grade in the Army of the Philippines by appointment of officers of the

Philippine Constabulary who are citizens of the Philippines and of such officers of the Philippine Scouts and of the Officers' Reserve Corps, U. S. Army, and of graduates of the United States Naval Academy, citizens of the Philippines, as have, prior to their appointment in the Army of the Philippines, legally and honorably severed their connection with the active elements of the Army of the United States, and of such others as may qualify through professional and military examination prescribed for the purpose.

* * * * *

(g) Until superseded by laws formulated by the National Assembly for specific application to the Army of the Philippines, all regulations, courts-martial procedure, and provisions of law now pertaining to the punishment, discharge, dismissal, resignation, administration, and retirement of officers and enlisted men of the Philippine Constabulary shall, as modified by provisions of this and other laws, apply to all officers and enlisted men on active duty in the Army.

* * * * *

SEC. 23. The General Staff Corps shall consist of the Chief of Staff, the Central General Staff, and the General Staff with troops.

(a) The Chief of Staff shall be directly subordinate to the President of the Philippines. He shall preside over the Central General Staff.

APPENDIX D

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 2151

Finance: Repayment of Funds Advanced to the National Defense Forces, Republic of the Philippines, by the United States Philippines-Ryukyus Command. Agreement between the United States of America and the Republic of the Philippines. Signed at Washington November 6, 1950. Entered into force November 6, 1950.

Department of State, Publication 4070 [Literal print]. United States Government Printing Office, Washington: 1951.

AGREEMENT

This Agreement, signed this date by and between the Government of the Republic of the Philippines, represented by the Honorable Carlos P. Romulo, Secretary of Foreign Affairs, and the Government of the United States, represented by the Honorable John W. Snyder, Secretary of the Treasury, is entered into for the purpose of arranging for the return to the Government of the United States of America of the residual total of the peso funds purchased for dollars and advanced to the National Defense Forces, Republic of the Philippines, by the United States Philippines-Ryukyus Command under agreements dated June 30, 1948, and July 11, 1949, between the Commanding General of the United States Philippines-Ryukyus Command and the Chief of Staff of

the National Defense Forces, Republic of the Philippines, copies of which are attached hereto and made a part hereof, for the purpose of permitting the Headquarters of the National Defense Forces on behalf of the United States Philippines-Ryukyus Command to pay certain specified claims which had on or before that date been approved by the United States Philippines-Ryukyus Command.

ARTICLE I

The Government of the Republic of the Philippines in recognition of its obligation to return to the United States the balance of the funds referred to above, now mutually agrees with the United States Government to the following method of accomplishing the return to the Government of the United States of the said balance:

1. In consideration of the agreement by the Government of the Republic of the Philippines to pay to the Government of the United States in dollars the balance of the aforesaid funds, the Government of the United States hereby releases the Government of the Republic of the Philippines from the obligation described in the aforesaid agreements of June 30, 1948, and July 11, 1949, to return immediately the total unexpended balance of the said peso funds.

2. The Government of the Republic of the Philippines agrees that the dollar amount payable hereunder, when it shall have been finally ascertained in accordance with Article II hereof, shall be computed at the rate of two pesos to one dollar.

3. The Government of the Republic of the Philippines further agrees to pay the dollar amount payable hereunder to the Secretary of the Treasury of the United States in ten annual installments, the first

nine payments to be in the amount of $3,500,000, and the final or residual payment to be in the amount determined by deducting the total of the previous principal payments from the total amount of dollars to be paid to the Secretary of the Treasury of the United States, the latter amount to be determined as provided in Article II hereof. It is further agreed that the first annual payment will be made on May 31, 1951.

4. The total amount of the dollar payment herein mutually agreed to shall bear interest at the rate of two and one-half percent per annum, payable on the unpaid principal balance thereof from time to time outstanding, and may be paid either annually or semiannually, at the option of the Government of the Republic of the Philippines, the first interest payment to be made on May 31, 1951, coincident with the first annual payment of principal. Interest shall be computed from the effective date of this agreement, and all interest shall be computed on the basis of the actual number of days, using a 365-day factor; provided, however, that pending final determination of the total principal amount to be paid to the Secretary of the Treasury of the United States in accordance with Article II hereof, interest shall be computed on the basis of a total amount payable of $35,000,000, to be appropriately adjusted by mutual agreement between the parties hereto upon final determination of such amount.

ARTICLE II

It is agreed by the parties hereto that the results of an audit currently being made by the United States Philippines-Ryukyus Command will be accepted by the Government of the Republic of the Philippines,

for the purpose of computing the dollar amount payable hereunder, as finally determinative of the total amount of peso funds required to be returned to the Treasurer of the United States pursuant to the aforesaid agreement of June 30, 1948, as extended by the agreement of July 11, 1949. It is further understood and agreed that the total amount of such peso funds will be the sum of all items, including unexpended funds in bank accounts of the National Defense Forces, Republic of the Philippines, which are determined by the aforesaid audit to be payable to the Government of the United States under the aforesaid agreements. The initial payments of principal provided for in Article I hereof shall be applied by the Government of the United States to the liquidation of all items which the aforesaid audit shall establish as representing collections due to the Government of the United States.

It is understood that the National Defense Forces, Republic of the Philippines, will lend full assistance to the United States Philippines-Ryukyus Command in order to effect the speedy completion of such audit.

ARTICLE III

It is understood and agreed by the parties hereto that the acceptance of this agreement by the Government of the Republic of the Philippines shall not be construed as a waiver of its rights to negotiate with the Government of the United States for the settlement of any pending claims which may be outstanding as of the effective date of this agreement. It is further understood and agreed that the obligation of the Government of the Republic of the Philippines to pay any installment in accordance with the provisions of Articles I and II hereof shall not be deferred or

delayed by reason of any negotiations then pending concerning any such claims.

ARTICLE IV

This agreement shall come into effect on the date of signature.

Signed in duplicate at Washington, D. C., this sixth day of November, 1950.

For the Government of the United States of America:

JOHN W. SNYDER.

For the Government of the Republic of the Philippines:

CARLOS P. ROMULO.

[Attachment]

HEADQUARTERS PHILIPPINE-RYUKYUS COMMAND

OFFICE OF THE COMMANDING GENERAL

GSPS APO 707

30 JUNE 1948.

Subject: Advance of Funds from the Appropriation of "Expenses Army of the Philippines" for Fiscal Years 1942–1946.

To: Chief of Staff, Armed Forces of the Philippines, Camp Murphy, Quezon City.

1. Under the provisions of Executive Order 9011 of the President of the United States, dated January 3, 1942,[1] the Commanding General, Philrycom, has from time to time authorized the advance of funds of the United States Government to the Philippine Army out of the appropriation "Expenses, Army of the Philippines", for the fiscal years 1942 to 1946

[1] 3 CFR, Cum. Supp., p. 1073.

inclusive, for the express purpose of paying certain claims adjudicated and approved by the Recovered Personnel Division and the Claims Service of Philrycom which have been submitted for payment to the Finance Service, Philippine Army.

2. In accordance with the written request dated 30 June 1948 of the Philippine Army,[2] the authorized representative of the Government of the Philippines, a check is attached in the amount of ₱93,778,000.00, ₱42,000,000.00 of the attached check for ₱93,778,000.00, together with balance of sums previously advanced to the Philippine Army, is considered sufficient to pay all claims duly adjudicated and approved by the Recovered Personnel Division and the Claims Service, Philrycom, and forwarded to your headquarters on or before 30 June 1948. The remainder of this check amounting to ₱51,778,000.00 is advanced for the sole purpose, except as provided in paragraph 3 of this letter, of paying additional amounts due on redeterminations approved by the Recovered Personnel Division and the Claims Service, Philrycom, as a result of reconsideration of claims filed before administrative deadlines of 15 January 1948 and 29 February 1948 for claims for arrears in pay pertaining to living and deceased veterans respectively, and 31 March 1948 for all other claims.

3. Procedures in effect prior to 30 June 1948 have allowed your headquarters to make payments for current pay, terminal date guerilla pay, and other liberation pay without approval of this headquarters. Subsequent to 30 June 1948 it is understood that your headquarters will make no payments on these specified types of claims without specific approval in each case by the Recovered Personnel Division, Philrycom. You are authorized to continue payments for claims for

[2] Not printed.

current pay, terminal date guerilla pay, and other liberation pay claims now on hand provided vouchers were filed and approved by your headquarters on or before 30 June 1948.

4. It is understood and agreed that the Philippine Army will furnish to the proper authorities of the Government of the United States of America abstracts of all claims paid under this Agreement, and to make available for inspection by representatives of the Government of the United States of America all records pertaining to the settlement of all claims or obligations included herein for the period of five years following 30 June 1948.

5. It is understood and agreed that all sums which have been, or herein advanced, to the Philippine Army from the above-mentioned appropriations, in excess of the total amount of the claims approved by the Recovered Personnel Division and Claims Service and paid by the Philippine Army as outlined above, will be returned to the Treasurer of the United States upon written request of the appropriate agency of the United States Government, but in no event later than 30 June 1949.

6. Acknowledgment of receipt of the check and concurrence in this communication is requested by indorsement hereon.

GEO. F. MOORE,
Major General, U. S. Army, Commanding.

1st Ind

HEADQUARTERS, NATIONAL DEFENSE FORCES, REPUBLIC OF THE PHILIPPINES, CAMP MURPHY, QUEZON CITY

To: Commanding General, Philippines-Ryukyus Command, APO 707.

1. The receipt of United States Treasury check No. 502972 for ₱93,778,000.00 is hereby acknowledged.

2. Headquarters National Defense Forces, the authorized representative of the Government of the Republic of the Philippines, in accepting this check agrees to all the provisions and conditions as set out in basic communication.

R. JALANDONI,
Major General, Chief of Staff.

[Attachment]

11 JUL 1949.

Subject: Funds from the Appropriation of "Expenses, Army of the Philippines", for Fiscal Years 1942–1946.

To: Chief of Staff, Armed Forces of the Philippines, Camp Murphy, Quezon City.

1. Under the provisions of Executive Order 9011 of the President of the United States, dated January 3, 1942, the Commanding General Philrycom from time to time authorized the advance of funds of the United States Government out of the appropriation "Expenses, Army of the Philippines" for the fiscal years 1942 to 1946 inclusive, for the express purpose of paying certain claims adjudicated and approved by the Recovered Personnel Division and Claims Service of Philrycom which were submitted for payment to the Finance Service, Philippine Army.

2. On 30 June 1948 a check in the amount of $93,778,000.00 was turned over to the Philippine Army which, with the balance of sums previously advanced, was considered sufficient to pay all claims duly adjudicated and approved by the Recovered Personnel Division and the Claims Service, Philrycom and such additional amounts due on redeterminations approved by the Recovered Personnel Division and the Claims Service, Philrycom, provided such claims had been originally filed before the administrative

deadlines of 15 January 1948, and 29 February 1948, for claims for arrears in pay pertaining to living and deceased veterans respectively, and 31 March 1948 for all other claims.

3. It was understood and agreed by written agreement between the Commanding General, Philrycom and the Chief of Staff, AFP dated 30 June 1948, that all sums which were advanced on 30 June 1948, or previously, in excess of the total amount of the claims approved by the Recovered Personnel Division and Claims Service would be returned to the Treasurer of the United States upon written request of the appropriate agency of the United States, but in no event later than 30 June 1949.

4. The agency now approving claims formerly approved by the Recovered Personnel Division and Claims Service is the Adjustment Division of the Adjutant General Records Depository.

5. It is considered expedient to modify the agreement entered into on 30 June 1948 by authorizing further payments from the funds previously advanced and by changing the date upon which the unexpended balance is to be returned to the Treasurer of the United States.

6. You are authorized to make payments from these funds on such arrears in pay, and procurement and wage claims as were submitted to the Adjustment Division, Adjutant General Records Depository before 30 June 1949 and are duly adjudicated and approved by the Adjustment Division, Adjutant General Records Depository, as payable from the above funds, and sent to the Philippine Army for payment before 1 December 1949.

7. It is understood and agreed that the Philippine Army will furnish to the proper authorities of the Government of the United States of America abstracts

of all claims paid under this Agreement, and to make available for inspection by representatives of the Government of the United States of America all records pertaining to the settlement of all claims or obligations included herein for the period of five years following 30 June 1949.

8. It is understood and agreed that all sums which have been advanced to the Philippine Army out of the appropriation "Expenses, Army of the Philippines" for the fiscal years 1942 to 1946 inclusive, in excess of the total amount of the claims previously approved for payment and those which may be approved for payment by the Adjustment Division, AGRD, and paid before 31 December 1949 will be returned to the Treasurer of the United States, at one time or in increments, upon written request of the appropriate agency of the United States Government, but in no event later than 31 December 1949.

GEORGE D. SHEA,
Major General, USA, Commanding.

1st Ind

HEADQUARTERS, NATIONAL DEFENSE FORCES, REPUBLIC OF THE PHILIPPINES, CAMP MURPHY, QUEZON CITY

To: Commanding General, Philippines Command, APO 707.

Headquarters, National Defense Forces, the authorized representative of the Government of the Republic of the Philippines, agrees to all the provisions and conditions as set out in basic communication.

M. N. CASTANEDA,
Major General, Chief of Staff.

APPENDIX E

The following material is extracted from Hearings held on October 6 and 9, 1941, by the House Committee on Insular Affairs, 77th Congress, First Session, on H. R. 5722, a bill to amend Section 19 (A) of the Philippine Independence Act and the Act of June 19, 1934, to make available certain sugar excise funds to finance the mobilization of the Philippine Commonwealth Army. This bill, which was amended and reintroduced as H. R. 5825 (H. Rept. 1309, 77th Cong., 1st Sess.), was subsequently abandoned when Congress provided an appropriation from general funds for support of that Army on December 17, 1941 (55 Stat. 810, 813):

* * * * * *

STATEMENTS OF BRIG. GEN. L. T. GEROW, ASSISTANT CHIEF OF STAFF, WAR PLANS DIVISION, WAR DEPARTMENT; COL. C. A. RUSSELL, WAR PLANS DIVISION, AND COL. R. S. MOORE, FINANCE DEPARTMENT

General GEROW. Mr. Chairman, and members of the committee, I am present on behalf of the Secretary of War and the Chief of Staff, to explain the purpose of H. R. 5722, a bill to authorize the appropriation of certain sugar excise tax funds and other funds, to be used for military and naval-defense purposes in the Philippine Islands.

Under the act of March 24, 1934, better known as the Tydings-McDuffie Act, complete independence of the Philippine Islands will become effective on July 4, 1946. To insure the readiness of the Philippine Commonwealth to provide for its own defense in 1946, Gen-

eral MacArthur, former Chief of Staff of the United States Army, was appointed military adviser in 1935. From that time to the present General MacArthur has been engaged in planning and in part organizing the Philippine Islands for self-defense. During that period and up until recently, the American forces in the Far East consisted of Regular Army forces, numbering approximately 6,000, and the Philippine Scouts, consisting of 6,400 native Filipinos.

During 1940, due to the growing tenseness of the world situation, President Quezon became concerned over the defenses of the Philippine Islands, particularly as to the state of readiness of the Philippine Army. His concern, in part, was founded upon the limited training which the Philippine Commonwealth had been able to finance for the Philippine Army and the failure of the United States Government to augment existing defenses. This concern resulted in a message from him to the President of the United States, requesting the assistance of the Federal Government in the defense program of the Philippines. President Quezon offered at that time to participate to the fullest extent possible in any program undertaken by the United States Government, and to that end suggested the augmentation of the ordinary budget of the Commonwealth—subject to the approval of the President and the Congress of the United States—by assets now held in trusteeship by the United States, authorized for appropriation but not yet available for expenditure by the Commonwealth.

The funds referred to were sugar-excise-tax funds and refunds incidental to the devaluation of the dollar, mentioned in the bill now under consideration. Section 6 of the act of August 7, 1939, amending the Philippine Independence Act of March 24, 1934, stated in part

that the proceeds of the excise tax were to be used by the Philippine Government in adjusting the economic position of the Philippines and in preparing those islands for the assumption of the responsibilities of an independent state. One of the most important obligations of a sovereign state is the protection of its national territory.

With the approval of the President, the Secretaries of the Treasury, of the Interior, and of State, and the United States High Commissioner to the Philippine Islands, a program of expenditure for the emergent mobilization and training of the Philippine Army and related defense activities, totaling in all some $52,000,000, was prepared in June 1941, in joint conference of Army and Navy officers in the Philippines, the United States High Commissioner, and Mr. Quezon. The general plans for augmenting the defenses of the Philippine Islands were reviewed by the Joint Board and, after approval by other interested agencies of the Federal Government and the President, the subject legislation was presented to the Congress, recommending its enactment.

Specifically, this bill will authorize the appropriation of some $57,000,000 of sugar-excise-tax and dollar-devaluation funds for the specific purpose of meeting the costs of mobilization and training of the Philippine Army over a period of approximately 1 year and accomplishing other defense projects contributing directly to the military defense of the Philippine Islands.

With the outbreak of war between Germany and Russia and the possibility of hostilities extending to the Far East, the War Department recommended that the Philippine Army be called into the service of the armed forces of the United States, under the authority contained in section 2 (a) (12) of the act of March 24, 1934, and that preliminary steps for their

mobilization and training be initiated without awaiting congressional action on H. R. 5722 and the appropriation of necessary funds in pursuance to any authorization bill enacted by the Congress.

To finance the mobilization and training of the Philippine Army pending action on the legislation now under consideration the President allocated $10,000,000 from his emergency fund. This bill, H. R. 5722, specifically authorizes reimbursement of the President's emergency fund of any funds allocated therefrom for the purpose.

The Philippine Army was called into the service of the armed forces of the United States on July 26, 1941, by Presidential order, and General MacArthur was assigned to command all the Army forces in the Far East. It was estimated that the $10,000,000 allocated by the President would suffice in all probability to meet mobilization and training expenses until about November 1, 1941. The War Department is accordingly hopeful that additional funds can be provided under the authority of H. R. 5722 prior to that date.

Until 1946 the United States is responsible for the defense of the Philippine Islands. The use of the Philippine Army in providing ground forces within their capabilities relieves the War Department from sending large additional forces from the United States with the additional costs of transportation, equipment, and maintenance. Accordingly, any funds appropriated under the authorization of legislation contained in H. R. 5722 will make corresponding savings in future appropriations for the War Department. Also, the expenditure of these funds for the purposes specified, at the same time will strengthen materially the defense of the Philippines and provide essential training for the Philippine Army, under experienced United States Army officers, thus

preparing the Philippine government to assume in 1946 the national-defense responsibilities of a sovereign state. [Pages 2–4.]

* * * * *

Mr. CRAWFORD. I think you would have one difficulty in convincing this committee, in view of the long struggle which has gone on in connection with sugar and coconut excise taxes in order to provide funds for the Philippines at a time when they are going through the rigors of independence; and, to speak very bluntly, it looks to me here as if the War Department is coming in and making a raid on the funds which we thought we were setting up for the purpose of assisting in the rehabilitation and economic readjustments which go along with independence; and, frankly, I would much prefer to see you provide these military costs through the regular military estimates than to make a raid on these funds. That is about as blunt as I can state it.

General GEROW. Congressman Crawford, the War Department has no idea of raiding the Treasury to get funds when it simply comes to Congress to ask for additional appropriation.

Mr. CRAWFORD. I mean, when you ask us to appropriate these specific funds.

General GEROW. Mr. Quezon himself asks that this be done in order to strengthen the defense of the Philippine Islands so that it might be able to take over the responsibility of an independent state in 1946.

We are asking for the money now because we believe that it is not only necessary that the Philippine Islands be armed at the present time but, by strengthening the defense of the Philippine Islands, it will make them much better prepared to take over the responsibility of an independent state when it is granted. [Pages 9–10.]

* * * * *

Mr. COLE. What is the reason for the provision at the bottom of page 2 exempting the expenditure of these funds from the General Accounting Office?

Colonel MOORE. The Army of the Philippines is organized, paid, and administered in accordance with Philippine Commonwealth laws and regulations.

Mr. COLE. What about the funds?

Colonel MOORE. During the current emergency every established agency of the Philippine Army should, so far as is practical, perform the functions prescribed by Philippine law for such agencies. The rates of pay of the Army of the Philippines are those prescribed by the Commonwealth Act 385. Moreover, it is impracticable to disrupt, during the current emergency, present Philippine practices and procedure, in order that the Philippine Army might comply with the strict procedures prescribed by the General Accounting Office for United States procurements and disbursements. It also appears highly desirable that the individual pay records of the Philippine Army remain in the Philippines in order that records of service may not be scattered.

The proposed measure, if enacted into law, by its terms will not only authorize the only practical method of carrying out the directive contained in the President's military order of July 26, 1941, but also will authorize expenditures from the President's emergency fund in the manner necessarily adopted to carry out the President's directive.

Mr. COLE. All funds appropriated by Congress for the War Department, for use in the Philippines are under the general accounting laws, are they not?

Colonel MOORE. Funds currently appropriated for the Philippine Scouts are handled in precisely the same manner as funds appropriated for our Army here.

The records of the Philippine Scouts are sent here. They are paid by our finance officers. Our quartermasters and signal officers and ordinance officers supply them.

When we call the Philippine Army into the service of the armed forces of the United States, we do not want to disrupt their organization. We want to continue it. We want their finance officers, their quartermasters, and every Philippine agency involved to carry out the same functions that they carry out now. Otherwise, the training would be detrimental rather than helpful.

Also we want to advance funds to the Philippine government so that payments can be made on their own forms and audited by the Philippine auditor, subject to the approval of the commanding general of the United States forces in the Far East and the commandant of the Sixteenth Naval District.

This is the only practical way to handle funds for calling the Philippine Army into the service of the armed forces of the United States. [Pages 14–15.]

* * * * *

STATEMENT OF J. M. ELIZALDE, RESIDENT COMMISSIONER OF THE PHILIPPINE ISLANDS TO THE UNITED STATES

Mr. ELIZALDE. Mr. Chairman, my name is J. M. Elizalde, Resident Commissioner, of the Philippines to the United States. I have a prepared statement that I submitted the other day to the members of the committee, and inasmuch as it is similar in tone to what General Gerow has already introduced in making a general explanation of this bill, I will just ask permission to submit it without reading, in order to save some of the valuable time of this committee. [Page 17.]

* * * * *

* * * First of all, General MacArthur was taken over by the Regular Army, and then the President of the United States issued an order transferring the Philippine Army to the United States Army. I understand they are not considered Federal troops; they are a separate unit, but under the United States Army. * * * [Page 20.]